



# राजपत्र, हिमाचल प्रदेश

## हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

बुधवार, 22 फरवरी, 2023 / 03 फाल्गुन, 1944

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

*Dated, the 17th January, 2023*

**No. Shram (A) 6-2/2020 (Awards) Dharamshala.**—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased

to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court, Kangra at Dharmshala on the website of the Printing & Stationery Department, Himachal Pradesh i.e. "e-Gazette" :—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	95/17	Usha Rani	Registrar, M/s Arni University	01-11-2022
2.	137/15	Kala Devi	Principal Govt. Sr. Sec.School	16-11-2022
3.	86/20	Vovan Chand	Chairman, President, Luxmi Narayan	16-11-2022
4.	904/16	Kambli Devi	E.E. HPPWD, Dharampur	16-11-2022
5.	137/16	Chaman Lal	E.E. HPPWD, Dharampur	16-11-2022
6.	728/16	Raj Kumar	E.E. HPPWD, Dharampur	16-11-2022
7.	687/16	Subhash Chand	H.P. T.D.C. Ltd. Manali	17-11-2022
8.	441/15	Lachman Dass	E.E. HPPWD, Bharmour	23-11-2022
9.	114/15	Murari Lal	M.D. Beas Valley Power Corp.	26-11-2022
10.	111/15	Mukesh	M.D. Beas Valley Power Corp.	26-11-2022
11.	113/15	Mohinder Singh	M.D. Beas Valley Power Corp.	26-11-2022
12.	333/16	Khem Singh	E.E. HPSEBL, Kullu	26-11-2022
13.	80/20	Kamla Devi	D.F.O. Karsog, Mandi	27-11-2022
14.	280/15	Hem Raj	E.E. HPPWD, Killar	29-11-2022
15.	436/16	Prem Dei	E.E. HPPWD, Killar	29-11-2022
16.	274/16	Jai Ram	E.E. HPPWD, Killar	29-11-2022
17.	174/16	Amar Chand	E.E. HPPWD, Killar	29-11-2022
18.	276/16	Kamla Devi	E.E. HPPWD, Killar	29-11-2022
19.	72/17	Sato Devi	E.E. HPPWD, Killar	29-11-2022
20.	84/17	Rakesh Kumar	E.E. HPPWD, Bharmour	09-11-2022
21.	533/15	Man Dei	E.E. HPPWD, Killar	30-11-2022

By order,

AKSHAY SOOD,  
Secretary (Lab. & Emp.).

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 95/2017  
Date of Institution : 28-03-2017  
Date of Decision : 01-11-2022

Smt. Usha Rani w/o Shri Balwinder Singh, r/o V.P.O. & Tehsil Indora, District Kangra,  
H.P. . .Petitioner.

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Versus

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The Registrar, M/s Arni University Kathgarh, Tehsil Indora, District Kangra, H.P.

. . Respondent.

**Reference under section 10 (1) of the Industrial Disputes Act, 1947**

For the petitioner : Sh. Vikram Samyal, Ld. Adv.

For the respondent : Sh. Atul Mahindru, Ld. Adv.

**AWARD**

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

**“Whether termination of the services of Smt. Usha Rani w/o Shri Balwinder Singh, r/o V.P.O. & Tehsil Indora, District Kangra, H.P. w.e.f. 19-03-2016 by the Registrar, M/s Arni University Kathgarh, Tehsil Indora, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”**

2. The case of the petitioner, in brief, is to the effect that she was engaged as Peon by the respondent w.e.f. 21.8.2009 and she performed her duties to the complete satisfaction of her superiors. She was initially in the Housekeeping department and was thereafter transferred to the Library and then to the chemistry and lastly to the department of mechanical engineering. Later on two senior officers of the University started eve-teasing her but she tolerated everything as she was in need of work to feed her family. When the things did not improve she had to take the stand and the officers of the respondent in order to pressurized her issued a notice dated 19.12.2015 for termination of her services on the excuse of financial crises. The respondent engaged new peons during the same period and their names have been shown in the seniority list and thus the respondent violated the principles of Last come First go. The petitioner represented against notice and explained her family circumstances but her request was turned down and principle of 'Last come and first go' was thrown to the winds. The petitioner lodged the FIR against the officers involved in outraging her modesty and at the same time raised the demand before the Labour-cum-Conciliation Officer. The matter could not be resolved during the conciliation proceedings and the aforesaid reference was made by the appropriate Government. The petitioner has thus prayed for her reinstatement with all consequential benefits including continuity in service and the back wages etc.

3. The respondent has resisted and contested the claim and raised several preliminary objections. On merits, the engagement of the petitioner as peon was admitted with the explanation that she was engaged purely on temporary basis on consolidated salary. As per the respondent, the petitioner was initially engaged in Housekeeping department and thereafter transferred to Library and thereafter to the department of Chemistry department and finally to the department of mechanical engineering. Since the respondent was facing heavy losses therefore, the intake of the students was reduced to 60 seats in the year 2016-2017 hence the surplus manpower was laid off by serving three months advance notice upon the petitioner as per Clause 37 (3) of the First Statute framed by the department of higher education, Government of Himachal Pradesh. The seniority for laying off the staff was considered department wise and the principle of Section 25-G was never violated. The respondent denied allegations regarding eve-teasing and explained that a committee

was constituted who looked into the matter and found allegations are baseless. The FIR is said to have been lodged in order to pressurize the respondent. Denying other allegations as incorrect, the respondent has prayed for dismissal of the claim.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and the language of the reference, following issues were framed for determination on 18.04.2019:—

1. Whether termination of services of the petitioner by the respondent *w.e.f.* 19-03-2016 is/was illegal and unjustified, as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable, as alleged? . . .*OPR.*
4. Whether the petitioner has no locus standi and cause of action to file the present case, as alleged? . . .*OPR.*
5. Whether the petition is bad for non-joinder of necessary parties, as alleged? . . .*OPR.*
6. Whether the petitioner has not approached the Court with clean hands and has suppressed the true and material facts from this Court, as alleged? . . .*OPR.*
7. Whether the petitioner is estopped to file the claim petition by her act, conduct and acquiescence, as alleged? . . .*OPR.*

Relief.

6. I have heard learned counsel for the parties at length and considered the material on record.

7. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1	:	Yes
Issue No. 2	:	Affirmative
Issue No. 3	:	No
Issue No. 4	:	No
Issue No. 5	:	No
Issue No. 6	:	No
Issue No. 7	:	No
Relief.	:	Petition is partly allowed per operative portion of the Award.

#### REASONS FOR FINDINGS

ISSUES No.3 & 4

8. Both the issues are taken up together. Since the petitioner has raised the demand and since a reference was made by the appropriate Government to this court, therefore, the petitioner was bound to file the claim petition and she had the locus standi as well as cause of action to file the claim as her services were terminated and she was feeling aggrieved thereby. Issues no.3 and 4, are therefore, decided against the respondent.

#### ISSUE No. 5

9. The respondent has though taken up the preliminary objection regarding non-joinder of necessary parties. The reply is silent regarding the person who as per the respondent was necessary party but has not been impleaded. No evidence has also been led on this aspect by the respondent. Since the petitioner was employee of the Arni University Kathgarh therefore, the University alone is a necessary party. The University can not contest the petition without the Registrar therefore, the Registrar has rightly been impleaded as respondent. No other person or institution is the necessary party to answer this claim. This issue is held against the respondent.

#### ISSUES No. 6 & 7

10. The respondent has alleged that the petitioner has not come to the court with clean hands yet no such facts have been pleaded in the reply which have allegedly been concealed from the court. No evidence has been led to show as to which facts are material and have been suppressed by the petitioner from the court. Since the petitioner has assailed her termination and has led evidence in support of the same, therefore, no material has been concealed by her. Similarly there is no act or conduct on the part of the petitioner which would estopped her from filing the claim petition as her services have been terminated and she has a right to assail such termination before the court. Both these issues are held against the respondent.

#### ISSUES No. 1 & 2

11. Both these issues are taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

12. So far as the university is concerned, it is settled law by now that university is also an industry although education is not profitable business. It is also settled law that although the teachers are not workmen as they do not perform manual, skilled or unskilled work yet the drivers, peons and other class-IV officials who perform manual, skilled or semi skilled work are treated as workmen for the purpose of the Act as the industrial dispute is beneficial legislation and it has to be given liberal interpretation so that basic purpose of the Act is achieved. Thus the university is an industry for the purpose of this Act and, therefore, Industrial Disputes Act is applicable to the present situation.

13. It is an admitted fact that the petitioner was engaged as peon and initially posted in housekeeping department and thereafter transferred to library and thereafter to chemistry department and finally to the department of mechanical engineering. It is an admitted fact that her services were engaged in the year 2009 and she had worked as such till her termination that took place in the year 2016. The petitioner has worked in continuity and there is nothing on the record to show that she had not completed 240 days in each calendar year before her termination. The respondent has infact claimed that termination of the services of the petitioner was result of lay off as some of the departments were closed in the University some employees had to be laid off. It is thus for the respondent to prove all these facts as the plea has been taken by the respondent. When the decision to lay off the peons and other employees was taken proper documentation would have taken place. No such decision has been placed on the record. No other material has been placed on

the record to show as to how many peons were supposed to be laid off on account of financial crises. No document has been placed on record to show as to how the financial graph of the University was coming down and how it was necessary to lay off some of the employees of the university. The plea of lay off has been taken by the respondent without supporting the same with documents. There is one more fact that draws attention of the court. While laying off the workmen the respondent has taken into account the department wise seniority and it is for the reason that senior peons have been laid off whereas, the juniors have been retained. There are documents on the record to support such fact. Seniority list Ext.P3/A has been placed on the record by PW3 Shri Mukesh (HR) of Arni University. When this document is carefully gone it shows that the petitioner has joined the institution on 21 August 2009 and she has been shown at serial no.4. There are other 24 peons shown in the list. The list two peons were engaged in the years 2011 and 2016. Both these peons have been retained. Similarly there are other peons who were engaged after the year 2009 and they have also been retained. The respondent has tried to justify this act on the plea that department wise seniority of the peons was taken into account. The question that arises for consideration is whether such course could have been followed by the respondent or not? To answer this question, it is necessary to go through the appointment letter of the present petitioner (Ext. PA). As per this letter, the petitioner was engaged on temporary basis w.e.f. 21.8.2009 and she could be assigned any duty at any location in the University. There are similar other conditions in the appointment letter. This appointment letter was accepted by the petitioner and she was initially engaged in the housekeeping department and thereafter transferred to library, chemistry department and finally in mechanical engineering department. It shows that her job was transferable and she could be transferred from one department to another department and in such situation there can not be any inter-department seniority. When the appointment letter shows that she could be transferred to any department at any place it is, therefore, very much clear that she could be transferred from one department to another department. There is nothing in the appointment letter of the petitioner to show that her engagement was made in respect to particular department and she could not claim any right in other department. There is nothing in her appointment letter to show that her seniority was to be considered in the department alone and her seniority had no co-relation with other peons of other department. When there is no such stipulation in the appointment letter and when the petitioner was transferred from one department to another department four times before her termination, the respondent has no right to say that the seniority was considered department-wise only. Such a plea is therefore, against the settled principles of service law. In case a peon was engaged in the year 2009 and was transferred to as many four departments, the respondent can not say that in the fourth department the petitioner was the junior most and therefore, her services were liable to be terminated by following the principle of 'last come first go'. Her seniority has to be taken into account from the date of her engagement as transfer is not fresh appointment and transferring a person from one department to another department will not make such person to lose his seniority. The petitioner has not taken the transfer by choice but she was transferred by the university from one department to another department. Thus there is no question of inter department seniority but the seniority of the peon was to be reckoned from the date of initial engagement.

14. It is clear from the detail of peons Ext.PW3/A that the petitioner has been shown at serial no.4 and she has been laid off whereas, the peons engaged later in time are still in service and therefore, the principle of 'last come first go' has not been complied with while laying off the peons. Even if it is presumed for a while the layoff was as per the rules and university fell within the definition of industrial establishment, even then the act of the respondent in laying off the petitioner by retaining the juniors is wrong. In case, the respondent intended the lay off the peons, those who were engaged after the petitioner would have firstly been disengaged so that principle of 'last come first go' could be followed. Since such a procedure was not followed, therefore, there is violation of Section 25-G of the Act. So far as the allegations regarding outraging of the modesty of the petitioner are concerned, such allegations have no bearing upon the result of this case as the

services of the petitioner were not dispensed with for any misconduct. It is entirely separate matter and it is not need be touched upon in the present case. The petitioner has specifically stated about her disengagement despite of the fact that junior peons to her have been retained and there is no denial of this fact as well. The respondent has come up with the plea that seniority of the petitioner was considered department wise. Since it has already been held hereinabove that the seniority could not be considered department wise, but the seniority had to be considered from the date of the engagement of the peons, therefore the petitioner was quite senior to those who have still been retained and thus there is violation of labour laws specially Section 25-G of the Act. The petitioner has been wrongly laid off by retaining juniors to her. The petitioner has raised the issue time and again as is clear from the letters written by the petitioner and tendered as Ext. PC to Ext. PI. These letters have been sent to various authorities alleging therein that peons junior to her have been retained. So far as three months notice for termination is concerned, even if Clause 37 (3) of the First Statute is considered, it has no bearing in the present case for the simple reason that whenever lay off has to take place, then the junior most workman has to be laid off first. Since juniors peons to the petitioner have been retained therefore, the alleged lay off is wrong on the face of it and the respondent is proved to have terminated the services of the petitioner without complying with the provisions of the Industrial Disputes Act. So far as statement of Shri Rohit Pathania is concerned, it also does not help the respondent in any manner. Ext.RW1/A is the affidavit of this witness in which he has referred to those facts which are pleaded in the reply. He has tendered on record demand notice of the petitioner Ext.RW1/B, course approval of session 2016-2017 Ext.RW1/D and Ext. RW1/E. His statement does not help the respondent in any manner and it is proved that the respondent has wrongly treated the petitioner as junior-most by counting department wise seniority whereas, her seniority should have been considered from the date of her initial engagement. It is also proved that while laying off some of the workmen the respondent has retained juniors and laid off the petitioner who was senior to them and therefore, there is violation of Section 25-G of the Act and the same is liable to be rectified.

15. The last question that survives for the determination is regarding relief to which the petitioner is entitled to. Since the services of the petitioner are proved to have been wrongly laid off by retaining the juniors therefore, the petitioner is entitled for the relief of reinstatement. The petitioner has specifically pleaded in her affidavit that she was still unemployed and was not gainfully employed anywhere. Therefore, the petitioner is also entitled to back wages. Taking into account the financial condition of the university, the ends of the justice will be served in case the respondent is directed to pay back wages to the extent of 25% from the date of her termination till her joining is accepted. Both these issues are held in favour of the petitioner.

#### RELIEF

16. In view of my discussion, it is held that the petitioner has proved that her services were terminated illegally and in violation to the provisions contained in 25-G of the Act by the respondent. The respondent is directed to reinstate the petitioner in service forthwith. She is held entitled back wages to the extent of 25% from the respondent, which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum from the date of award till the date of its realization. The claim petition is, therefore, partly allowed. Parties are left to bear their costs.

17. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 1st day of November, 2022.

Sd/-  
(HANS RAJ),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala.*

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT MANDI)**

Ref. No. : 137/2015  
Date of Institution : 21-3-2015  
Date of Decision : 16-11-2022

Smt. Kala Devi w/o Shri Dhale Ram, r/o Village Beogi, Phati Kharahal, Kothi Kais, Tehsil  
& District Kullu, H.P. . *Petitioner.*

*Versus*

The Principal, Government Senior Secondary School, Kharahal (Kionja), District Kullu,  
H.P. . *Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947.**

For the petitioner : Sh. Lalit Thakur, Ld. Legal Aid Adv.

For the respondent : Sh. Anil Sharma, Ld. Dy. D.A.

**AWARD**

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

**“Whether termination of the services fo Smt. Kala Devi w/o Shri Dhale Ram, r/o Village Beogi, Phati Kharahal, Kothi Kais, Tehsil District Kullu, H.P. during year 2008 by the Principal, Government Senior Secondary School Kharahal (Kinja), District Kullu, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”**

2. The case of the petitioner, in brief, is to the effect that she was engaged as a daily waged water carrier in Government Senior Secondary School Kharahal in the year 2005 on monthly wages of Rs. 300/- per month and she worked regularly in the aforesaid capacity till 2008 and completed 240 working days in each calendar year. In the year 2008 her services were



terminated illegally without serving any notice upon her and salary for last seven months was also not paid to her. She was maintaining her own attendance register during the period of her employment. She requested the respondent time and again to reinstate her in service but nothing was done. She even applied for information under RTI Act but no such information was supplied to her. The respondent has re-engaged fresh hand on the same post and thus the rights of the petitioner have been jeopardized. On such averments, the petitioner has submitted that there has been violation of Sections 25-F, and 25-H of the Act and therefore, the claim be allowed and respondent be directed to re-engage the petitioner with all the consequential benefits.

3. The respondent has resisted and contested the claim and submitted that the petitioner was neither engaged on daily wage basis nor through parent teacher association as water carrier at any point of time. The petitioner is said to have neither worked in the school nor completed 240 days at any point of time and her services were also never terminated in any manner as alleged. The application moved under RTI Act was replied and the information sought by her was supplied. One Smt. Usha Devi is said to have been engaged on part-time water carrier on 19.5.2007 vide letter no.EDN-KLU(E-III)01/06-1808 dated 19.05.2007 and the petitioner was neither engaged at any point of time nor her service was terminated. It is submitted that petition being without merit be dismissed and the reference be answered in negative.

4. The petitioner did not file rejoinder. From the pleadings of the parties as well as language of the reference, following issues were framed for determination on 29.5.2018:—

1. Whether termination of the service of the petitioner by the respondent during year, 2008 is/was improper and unjustified as alleged? . . .*OPP*.
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.

Relief.

5. I have heard learned counsel for the petitioner as well as learned Dy. District Attorney for the respondent at length and considered the material on record.

6. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	: Negative
Issue No.2	: Negative
Issue No.3	: No
Relief.	: Petition is <b>dismissed</b> per operative portion of the Award.

#### REASONS FOR FINDINGS

##### ISSUES No.1 to 3

7. All these issues taken up together for the sake of convenience and to avoid the repetition of evidence.

8. The petitioner has examined herself as PW1 in the witness box and thereafter the evidence was closed by her. The respondent also examined Shri Hans Raj Acharya the then Principal as RW1. When the evidence was closed, the petitioner moved an application for leading additional evidence submitting therein that she wanted to tender two more affidavits of the witnesses but she could not do so earlier due to inadvertence, hence she be permitted to lead further evidence. The application was contested by the respondent and finally dismissed by this court vide order dated 07.9.2022. Thus there is self serving statement of the petitioner on the record in support of her case.

9. There is no doubt that Industrial Disputes Act is beneficial piece of legislation and it leans towards the welfare of the working class. It is also settled law that all the presumptions are to be drawn in favour of the workman by the court and the respondent is supposed to rebut those presumptions. It is also settled that a workman has to bring some material on the record in support of his/her claim and only then the presumption can be drawn by the court. After the prima-facie material is placed on the record, only thereafter the onus shifts upon the respondent to lead better evidence to disprove the case of the workman. In this case, the petitioner alleges that she was engaged as a water carrier on daily wage basis in the year 2005 and she worked till the year 2008 in continuity. She has further pleaded that wages of Rs.300/- per month were paid to her. It may be stated here that the respondent is a Government school and the funds of the Government are spent as per rules and a complete record for spending even a single rupee of the Government has to be maintained. The Government funds can not be spent without maintaining any record. Thus in case, the petitioner was engaged as a water carrier and paid Rs.300/- per month for many years, a complete record regarding the same should have been maintained in the school. The petitioner has not called for any such record to prove her case. The respondent, on the other hand, has come up with the specific plea that the petitioner was neither engaging as a workman nor a single rupee from Government exchequer was paid to her, hence no record was maintained in the office. The petitioner in para no.5 of the petition has submitted that she was maintaining her own attendance register in between 2005 to 2008. She has pleaded that such register has been placed on the record, whereas, as matter of fact no such document was filed with the claim by her. The court was thus prevented from examining the contents of any such register. Had any such register been placed on the record, the court could have examined the same before coming to any conclusion. The petitioner has though pleaded the fact that register was maintained by her but such register was never filed on the record. The petitioner has made herself serving statement on the record without examining any other witness. The application was although moved by her to lead additional evidence at the belated stage but the same was dismissed by the court. The petitioner has although claimed that information under RTI Act was not supplied to her but the respondent in reply to this allegations has specifically stated that information under RTI Act was supplied to her. The petitioner alleges that her services were orally terminated in the year 2008 whereas, it is an admitted fact that one Smt. Usha Devi was already working in the school since the year 2007. When the water carrier was engaged on part-time basis by the school in the year 2007, there was no question of taking the services of the petitioner till the year 2008 by the respondent. The petitioner has tendered her affidavit Ext.PW1/A on the record. While she was subjected to cross-examination she stated that she was not having any order regarding the job. She has stated that Smt. Usha Devi was engaged in the year 2007 on part-time basis. She has further admitted that there was only one water carrier in the school. In case Smt. Usha Devi was engaged in the year 2007 no question of engaging the petitioner till the year 2008 as there was a single post of the water carrier in the school. The respondent, on the other hand has examined Shri Hans Raj Acharya the Principal of the school and he has sworn his affidavit Ext.RW1/A. In his affidavit, he has specifically pleaded that the petitioner was never engaged in the school nor she was paid even a single rupee from Government funds. This witness was subjected to cross-examination and he has specifically denied that the petitioner has worked in the school as water carrier and she was paid Rs.300/- per month. This witness has tendered on record the copy of the information obtained under RTI Act as Ext.

RW1/B. In this information, it has specifically been mentioned that the petitioner was neither engaged as a water carrier nor there was any record pertaining to her as a water carrier in the school. Ext.RW1/C is the copy of the information supplied to the petitioner and as per this information petitioner was never engaged nor she was terminated. Ext. RW1/D is the order dated 19.5.2007 whereby Smt. Usha Devi was engaged as water carrier in the school on part-time basis.

10. As aforesaid although the Industrial Disputes Act is beneficial piece of legislation but the petitioner can not get the relief mere asking unless the prima-facie material is placed on the record to let the court draw a presumption in favour of the petitioner. In this case, the petitioner has not even placed on the record the so-called attendance register maintained by her during the period of five years. The petitioner has not examined any of her family member in the witness box who can at least state that the petitioner was working in the school as a water carrier. The petitioner has failed to prove that a payment of Rs.300/- per month was made to her from the government funds by the respondent. For the sake of repetition, in case any amount was paid to the petitioner from the Government exchequer, a complete record should have been maintained regarding the same. There may be some mutual understanding between school staff and the petitioner whereby the petitioner was paid by the school staff out of their own pocket. Otherwise also, no such material has been placed on the record. Thus for the aforesaid reasons, it is held that the petitioner has failed to prove that she was engaged as daily wage water carrier in the school and her services were disengaged in the year 2008 as claimed by her. The petitioner is, therefore, not entitled to any relief as she has failed to prove issues no.1 and 2. Claim petition is held to maintainable as it has been filed in support of the reference received from the appropriate Government. Issues no.1 and 2 are held in negative and issue no.3 is held in positive.

#### RELIEF

11. In view of my above discussions, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

12. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 16<sup>th</sup> day of November, 2022.

Sd/-  
(HANS RAJ),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala (H.P.).*  
*Camp at Mandi)*

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**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT MANDI)**

Ref. No. : 86/2020  
Date of Institution : 11-09-2020  
Date of Decision : 16-11-2022

Shri Vovan Chand s/o Shri Ram Singh, r/o Village Bhamsai, P.O. Nagwain, Tehsil Aut, District Mandi, H.P. . .Petitioner .

*Versus*

The Chairman/President, Luxmi Narayan Aarthi Sangh, Takoli, Tehsil Aut, District Mandi, H.P. . .Respondent

**Reference under section 10 (1) of the Industrial Disputes Act, 1947**

For the petitioner : Sh. Deepak Azad, Ld. Adv.

For the respondent : Respondent already ex-parte

**AWARD**

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

**“Whether the termination of services of Shri Vovan Chand s/o Shri Ram Singh, r/o Village Bhamsai, P.O. Nagwain, Tehsil Aut, District Mandi, H.P. during March, 2019 by the Chairman/President, Luxmi Narayan Aarthi Sangh Takoli, Tehsil Aut, District Mandi, H.P., without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”**

2. Petitioner Shri Vovan Chand has filed the claim in support of the reference on the averments that his services were engaged on 01.4.2012 by the respondent as Clerk and he served the respondent till December, 2018 in continuity and completed the period of 240 days every year. As per the petitioner, his services were orally terminated in January, 2019 without serving any notice or paying any compensation despite of the fact that there was sufficient work available with the respondent and thus there has been violation of Section 25-F of the Act. The respondent is also said to have retained the juniors namely Shri Room Singh and Shri Anurag Sharma and thus violated the principle of 'first come last go' and there is violation of Section 25-G of the Act as well. On such averments, the petitioner has prayed that his services ordered to be reinstated with all the benefits.

3. The respondent was summoned but none come forward despite the service, and therefore, the respondent was ordered to be proceeded against exparte and the petitioner was directed to lead exparte evidence.

4. The petitioner has led exparte evidence and examined himself as PW1. He has examined one Shri Mahender Sharma as PW2 in order to corroborate his statement. When the statement of the petitioner recorded in the shape of affidavit Ext.PW1/A and statement of Shri Mahender Sharma in the shape of affidavit Ext. PW2/A, are examined, it is established that the petitioner was engaged as clerk by the respondent in the year 2012. The petitioner has also led documentary evidence in support of his case in the shape of receipt Mark-B, Mark-C, Mark-D etc. which are signed by him in the name of the respondent. These receipts, therefore, show that the petitioner was assigned the work of issuance of the receipts to the owner/drivers of the vehicle. Mark-B pertains to the year 2014 and Mark-C to the year 2015, Mark-D pertains to the year 2018 and it shows that the petitioner has worked during aforesaid period with the respondent. Mark-E is

receipt for the year 2013 and it has also been signed by him. The petitioner has also tendered on record a copy of saving passbook of Himachal Gramin Bank in respect of the respondent. A sum of Rs.10,000/- was paid on 3.5.2013 to the petitioner and there is entry to this effect in this passbook. There are other such entries in the same which shows that some payment was made by the respondent to the petitioner. The statement of petitioner has gone unrebutted and unchallenged and can not be disbelieved when such statement had been made by him on oath and such statement is corroborated by some receipts field by him these receipts are signed by him while performing his duties as clerk with the respondent. Shri Mahender Sharma (PW2) in his affidavit has sworn that the petitioner had been working with the respondent till December, 2018 and he had worked without any break. This affidavit also proves that the services of the petitioner were disengaged by the respondent in January 2019 without following the process of law. There are no reasons to disbelieve this Mahender Sharma as well and when the statements of the petitioner as well as Mahender Sharma are taken into account by this court, it can be safely concluded that the petitioner has worked as clerk with the respondent and was paid on monthly basis. It is also proved from the unrebutted and unchallenged evidence that on the date of oral termination of the petitioner he had completed the work of 240 minimum days in the preceding 12 calendar months as the petitioner has specifically pleaded that he had worked in continuity till December 2018. This fact is also corroborated by the statement of Shri Mahender Sharma. Since the services of the petitioner have been orally disengaged by the respondent without issuance of notice under Section 25-F of the Act, therefore, such a termination is against the provisions contained in Section 25-F of the Act.

5. The petitioner has come up with the case that when his services were terminated juniors to him were retained. He has named two persons as Shri Room Singh and Anurag Sharma in his petition and affidavit. Although, the respondent has not contested the petition yet the petitioner has also failed to prove this fact for the reason that he has not even named the fathers of these two persons. It is thus not clear that Shri Room Singh and Shri Anurag Sharma had worked with the respondent or not. The petitioner was not helpless during inquiry. He could have prayed this court to summon the record of the respondent so that truth would have come out. The petitioner has not got records of the respondent summoned regarding the details of employees engaged by the respondent. The witness Shri Mahender Sharma examined by the petitioner in support of his case has also not supported the case of the petitioner regarding retaining of the workmen junior to the petitioner. Thus violation of the provision contained Section 25-G of the Act is not established for want of sufficient evidence on the record.

6. It is settled law that whenever there is violation of Section 25-F of the Act alone, the appropriate relief the court can grant is the payment of compensation and not of reinstatement as the respondent is always at liberty to disengage the workman after re-engagement on completion of the codal formalities as provided under Section 25-F of the Act. Thus the purpose of reinstatement is frustrated. In the case in hand, taking into account the fact that the respondent is proved to have violated the provisions of Section 25-F of the Act the petitioner is held entitled for compensation and taking into account the age of the petitioner and other factors the compensation is assessed as ₹75,000/- which shall be paid within four months.

#### RELIEF

7. In view of my discussion on the above, it is held that though there had been violation of Sections 25-F of the Act in this case therefore, the reinstatement and other consequential benefits can not be granted in his favour but he is held entitled for compensation to the tune of ₹75,000/- (Rupees seventy five thousand only), which would be paid within four months by the respondent from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

8. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 16th day of November, 2022.

Sd/-  
(HANS RAJ),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala (H.P.).  
(Camp at Mandi)

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT MANDI)**

Ref. No. : 904/2015  
Date of Institution : 24-12-2016  
Date of Decision : 16-11-2022

Smt. Kambli Devi w/o Shri Bhagi Ram, r/o Village Chah, P.O. Mandap, Tehsil Sarkaghat,  
District Mandi, H.P. . .Petitioner.

*Versus*

1. The Engineer-in-Chief, H.P.P.W.D. Nirman Bhawan, Shimla, District Shimla, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P.  
. .Respondents.

**Reference under section 10 (1) of the Industrial Disputes Act, 1947**

For the petitioner : Sh. Deepak Azad, Ld. Adv.  
For the respondent(s) : Sh. Umender Parmar, Ld. ADA

**AWARD**

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

**"Whether alleged termination of the services of Smt. Kambli Devi w/o Shri Bhagi Ram, r/o Village Chah, P.O. Mandap, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 01-10-1999 by (i) the Engineer-Chief, H.P.P.W.D. Nirman Bhawan, Shimla, District Shimla, H.P. (ii) the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P., who has worked as beldar on daily wages basis and has raised her**

**industrial dispute vide demand notice dated nil received in the Labour Office Mandi on 10-03-2015 after delay of more than 15 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?**

2. The case of the petitioner, in brief, to the effect that she was engaged as daily waged beldar by the respondent and she worked for 237 days where after her services were terminated without any reason on 30.9.1999 in violation of Section 25-F of the Act. Further the workmen junior to her were retained and regularized with the passage of time and there is violation of Section 25-G of the Act as well. As per the petitioner, she is an illiterate villager and not able to make both the hands meet. The demand was raised on 2nd March 2015 by her and the conciliation failed, hence the reference was made by the appropriate Government. The petitioner has prayed for reinstatement with full back wages and other consequential benefits.

3. The respondent has resisted and contested the petition and pleaded that the petitioner has worked *w.e.f.* 01/1999 to 09/1999 only for 211 days and thereafter she left the job at her own and did not report for the work. In this manner she did not complete 240 working days in the period of 12 calendar months and no person junior to her was retained and regularized. It is submitted that the petitioner herself was responsible for the state affairs and therefore the petition be dismissed.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. On the pleadings of the parties, following issues were framed for determination on 19.09.2018:—

1. Whether termination of the service of petitioner by the respondents *w.e.f.* 01-10-1999 is/was legal and justified as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form, as alleged? . . .*OPR.*
4. Whether the claim petition suffers from delay and laches as alleged? . . .*OPR.*

Relief.

6. I have heard learned counsel for the petitioner as well as learned ADA for the respondents at length and considered the material on record.

7. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

- |            |   |                     |
|------------|---|---------------------|
| Issue No.1 | : | decided accordingly |
| Issue No.2 | : | decided accordingly |
| Issue No.3 | : | No                  |
| Issue No.4 | : | decided accordingly |

Relief. : Petition is **partly allowed** awarding lump sum compensation of ₹75,000/-

### REASONS FOR FINDINGS

#### ISSUES No.1, 3 & 4

8. All these issues taken up together for the sake of convenience and to avoid the repetition of evidence.

9. The petitioner has relied upon her mandays chart Ext. PW1/B. She is shown to have worked for total 211 days in between 01/1999 to 12/1999. In the month of September 1999 she has worked for 30 days and her working days from October to December 1999 are shown as nil. Meaning thereby, her services have been terminated in September 1999. Since number of days the petitioner has worked are less than 240 days, therefore, the violation of Section 25-F of the Act is not attracted at all.

10. The petitioner has alleged that her services were terminated by the respondent in September 1999, whereas, the respondent has taken the plea that petitioner had left the work at her own and abandoned the job out of her sweet will. The plea of abandonment is the plea of fact and the onus is always upon the employer to prove such abandonment. The respondent has examined Engineer Narinder Kumar Verma as RW1 and his affidavit Ext.RW1/A has been placed on the record. This official witness has reaffirmed the contents of the reply in his affidavit. In his cross-examination he has specifically said that no notice was issued by them to call for the petitioner to report to her duties. Abandonment of work is not to be automatically presumed by the court on the absence of the workman from the work. It is for the employer to prove that he did everything to call back the workman and also apprised the workman of the aftermaths of such absence and despite of all this the workman did not report to the work. Since the respondent did not issue notice to the petitioner to call her back therefore, the plea of abandonment is not established at all. The respondent should have apprised the petitioner of the consequences of such absence. The Act is beneficial piece of legislation and meant to protect the interest of labour class as they are unable to protect their interest on account of illiteracy, poverty and being underprivileged. For this reason, the entire onus is upon the employer to prove the abandonment and lead evidence in support thereof. The respondent has not led any evidence to show that the petitioner was called back to join her duties and despite of all this she did not report to her duties. No evidence has been led to prove that the respondent had called for any explanation of the petitioner and explained the aftermaths of such absence. After all, the petitioner has worked for 211 days in continuity and had she worked for 30 days more, she would have crossed the limit of minimum working days of 240 days in order to take the shelter of section 25-F in the matter of termination of her services. In case the petitioner had started absenting herself before she could touch the figure of minimum 240 working days, the employer could not have made her to suffer for her illiteracy and lack of awareness, but it was the duty of the respondent to write a letter to her and ask her to report back and work as the funds and the work was not exhausted. Since no such notice was ever issued, therefore, the plea of abandonment fails and the presumption goes that the services of the petitioner were terminated on account of her absence on the failure of the respondent to perform the statutory duties of calling her back and report to her work. Thus the petitioner has been able to establish that her services were terminated by the respondent in September 1999.

11. The next question that arises for consideration is whether the respondent has violated the principles contained in Section 25-G of the Act or not. It is settled law that whenever violation of Section 25-G is alleged, it is not for the petitioner to prove that he/she has worked for minimum 240 days. The number of working days is irrelevant when the plea of the petitioner regarding the violation of section 25 G is subject matter of adjudication. The violation of the provisions contained



in Section 25-G of the Act is attracted whenever it is shown that there were workmen junior to the petitioner and services of the petitioner were terminated first and the juniors were retained. Section 25-G of the Act works on the principle of 'last come first go'. The petitioner has come up with the plea that workmen junior to her were retained and her services were terminated. The petitioner has not named any junior in the pleadings yet pleadings are very specific to the effect that juniors were retained. The respondent has filed the reply and denied the allegations in a vague manner. Since the respondent is the employer and custodian of the record, therefore, much more is required to be performed by the respondent. The respondent can not avoid the liability by pleadings simple denial of the facts. Since the respondent is the custodian of record, it should have placed on the record any document showing that the petitioner was at the bottom of the seniority list at the time when she left the job. No such list has been placed on the record. It is also not pleaded in case of the respondent that no other workmen were engaged after the year 1999 on daily wages in the department. Had no junior been engaged after the petitioner left the work in the year 1999, position would have been different. The petitioner has specifically stated that workmen junior to her have been regularized. There is no specific denial of this fact by the respondent. No record has been produced in support of the denial of the respondent. It can not be believed that no junior was engaged after the year 1999. It was for the respondent to place on record documents showing that no workman was junior to the petitioner at the time when the petitioner left the work. Since no such material has been placed on the record by the respondent, therefore, the respondent has failed to establish that there was no violation of Sections 25-G and 25-H of the Act. The petitioner being illiterate workman having worked in the year 1999 can not be presumed to plead the details of those workmen who were either junior to her or engaged after she was terminated. Since she has specifically stated on oath that junior workmen to her were retained, therefore, the onus was upon the respondent to produce the relevant record and establish the facts pleaded by it. Since no such evidence has been led therefore, the petitioner has been able to establish that workmen junior to her were retained. There is complete violation of Sections 25-G of the Act.

12. The case of the respondent from the very beginning that the matter has been raised after more than 15 years by the petitioner, and therefore, it is vitiated by delay and laches. A specific reference has also been received by this court. From the material on the record, it is proved that the petitioner has slept over her rights for 15 years and she has also failed to place cogent material on the record to explain the reason for raising such a delayed demand. She has although pleaded that her husband was ill, but no material has been placed on the record in support of the same. Thus the petitioner has failed to prove that she has approached the conciliation authorities by way of demand notice at earliest.

13. It is by now settled law that a workman who sleeps over his right together for years can not claim reinstatement as a matter of right and the labour court is competent to mould relief of reinstatement into grant of lump sum compensation so that ends of justice are met. In the case in hand also, taking into account the fact that delay of 15 years has occasioned in between the termination of the services and raising of the demand, therefore, the relief of reinstatement shall not be appropriated in these facts and circumstances. The ends of justice shall be met, in case, compensation of ₹75,000/- (Rupees seventy five thousand only) in lump sum is awarded in favour of the petitioner so that she is adequately compensated for the wrongful loss caused to her. The petition filed by the petitioner is held as maintainable. Issues no.1 and 4 are decided accordingly and issue no.3 is decided in negative.

## ISSUE No. 2

14. In view of the above discussion the petitioner is held entitled for compensation to the tune of ₹75,000/- (Rupees seventy five thousand only), hence this issue is decided accordingly.

## RELIEF

15. In view of my discussion on the above issues, it is held that though there had been violation of Sections 25-G of the Act in this case but the petitioner had raised demand after a gap of more than 15 years and her claim for reinstatement has therefore, been vitiated by delay and latches, hence, the reinstatement and other consequential benefits can not be granted in her favour but she is held entitled for compensation to the tune of ₹75,000/- (Rupees seventy five thousand only), which would be paid within four months by the respondent from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

16. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 16th day of November, 2022.

Sd/-  
(HANS RAJ),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala (H.P.).*  
*(Camp at Mandi)*

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT MANDI)**

Ref. No. : 137/2016  
Date of Institution : 17-3-2016  
Date of Decision : 16-11-2022

Shri Chaman Lal s/o Shri Gobind Ram, r/o Village Dharjoal, Tehsil Sarkaghat, District Mandi, H.P. . .Petitioner.

*Versus*

The Executive Engineer, H.P.P.W.D, Division Dharampur, District Mandi, H.P. . .Respondent.

**Reference under section 10 (1) of the Industrial Disputes Act, 1947**

For the petitioner : Sh. N.L. Kaundal, Ld. AR  
For the respondent : Sh. Anil Sharma, Ld. Dy. D.A.

## AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

**“Whether alleged termination of services Sh. Chaman Lal s/o Sh. Gobind Ram r/o Village Dharjoal, Tehsil Sarkaghat, Distt. Mandi, H.P. during 7/2001 by the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P., who has worked as beldar on daily wages during the year 11/1998 to 7/2001 respectively and had raised his industrial dispute *vide* demand notice dated 16/4/2014 after delay of more than 13 years, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period as mentioned above and delay of more than 13 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”**

2. The petitioner has come up with the claim that he was engaged by the respondent on daily wage basis on muster roll as beldar *w.e.f.* 11/1998 to 7/2001 and he worked for more than 240 working days in every calendar year and his services were unlawfully terminated *vide* verbal order *w.e.f.* 7/2001 by the respondent in violation of Section 25-F of the Act. Apart from it, the respondent has violated the principle of 'last come first go' as workmen junior to the petitioner namely Shri Shashi Pal s/o Shri Bihari Lal (6.4.1999), Smt. Roshani Devi w/o Shri Nag Ram (7.4.1999) etc. were not disengaged prior to the petitioner. The respondent is also said to have engaged fresh hands in the year 2008 namely Shri Pradeep Kumar etc. mentioned in para no.4 of the petition. The petitioner raised demand on 21.2.2015 and it was forwarded to Labour Officer, Mandi who tried to settle the dispute but could not succeed, hence the matter was referred to appropriate Government and the present reference has been made. One Shri Sanjay Kumar s/o Shri Purbia Ram is said to have worked for 153 days only and his services are now been regularized in the year 2013. On the aforesaid averments, the petitioner has prayed that the respondent be directed to reinstate his service and grant him the benefit of back wages, seniority and continuity in service.

3. The respondent has resisted and contested the petition and taken up the plea that neither the petitioner has worked with the respondent at any point of time nor his services were terminated. It is submitted that there is neither violation of Section 25-F nor of Section 25-G and 25-H of the Act. The petitioner is said to have approached the court after many years and his claim was liable to be defeated on the ground of delay and laches.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 05.4.2019:—

1. Whether termination of the service of petitioner by the respondents during July, 2001 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form, as alleged? . . .*OPR.*

4. Whether the claim petition suffers from delay and laches as alleged? . . . *OPR.*

Relief.

6. I have heard learned Authorized Representative for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

7. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	:	decided accordingly
Issue No.2	:	decided accordingly
Issue No.3	:	No
Issue No.4	:	decided accordingly
Relief	:	Petition is <b>partly allowed</b> awarding lump sum compensation of ₹75,000/- per operative portion of the Award

#### REASONS FOR FINDINGS

##### ISSUES No.1 to 4

8. All these issues taken up together for the sake of convenience and to avoid the repetition of evidence.

9. A bare perusal of the reference received by this court shows that the demand was raised after 13 years by the petitioner vide demand notice dated 16.4.2014. The appropriate government has sought adjudication on the effects of delay on the claim of the petitioner. Thus the delay in making the demand and its effect on the claim is also a prime question to be answered by this court. The respondent has denied the case of the petitioner in totality. It is said that the petitioner was neither engaged nor his services were terminated. The documents tendered by the parties on the record are material for the purpose of this case. The petitioner has tendered on record the demand notice dated 16.4.2014 Ext. PA. He has also got the reply to the notice by the respondent proved through PW2 Shri Dev Chand, Labour Inspector. This reply was filed before the Labour Inspector-cum-Conciliation Officer, Joginder Nagar by the respondent and thereafter the conciliation proceedings took place. Para no.1 of the demand notice (Ext. PA) is very material. The petitioner has alleged that he was engaged in the year 1998 and he worked as such till the year 2001. He has not even mentioned the month when he had joined and the month when his services were terminated. When the respondent filed the reply to this notice, specific mention of the months was made as 11/1998 to 7/2001. Such specific mention of the months when the petitioner was engaged and disengaged can not be due to inadvertence or clerical mistake. The respondent not only admitted the fact that the petitioner has worked during the aforesaid period with the respondent but also came up with the plea that the petitioner had left the work at his own and his services were never terminated. The reply to this notice was signed by a responsible officer *i.e.* Executive Engineer B&R Sub Division Dharampur. When this reply was received by the Labour Inspector-cum-Conciliation Officer, he summoned the parties and the conciliation proceedings commenced. Conciliation proceedings under Industrial Disputes Act are not bare formalities but every effort is made reconcile the dispute after examining record and hearing the parties. After making all the efforts, in case, the conciliation fails only then the report is made to appropriate Government and reference is then made by the appropriate Government for adjudication to the

Labour Court. It is therefore, well understood that several hearingstake place before the Conciliation Officer where the parties are heard and the documents and the record so produced is scrutinized. There is nothing on the record to show that the officers of the respondent department ever realized during the conciliation proceedings that the reply to the demand notice was wrongly and inadvertently prepared. There is again nothing on the record to show that this mistake was realized during the conciliation proceedings. When the conciliation proceedings took place, the stand of the respondent remained the same and to the effect that the petitioner has although worked with the respondent in between 11/1998 to 7/2001 in continuity but he left his services at his own and his services were never terminated. This reply to the demand notice is therefore, very material document and it can not be ignored and plea of the respondent that the petitioner has never worked with the respondent can not be relied upon unless this document is explained by the Executive Engineer, who signed this document. No such officer has appeared in the witness box to explain the things. Had any such officer appeared in the witness box and explained the manner in which he inadvertently admitted the case of the petitioner, the position would have been different. The petitioner has appeared as PW1 in the witness box and has sworn his detailed affidavit. He was subjected to cross-examination wherein nothing came out to disbelieve him. He has denied specifically that he has not worked with the respondent at any point of time. The respondent on the other hand, has examined Shri Anil Kumar Sharma as RW1, who fag end in the proceedings in this claim petition came with a new document having been obtained from Executive Engineer, HPPWD Sarkaghat. This document was placed on record Ext.RW1/C and according to this document the petitioner has worked *w.e.f.* 11.10.1999 to 31.12.1999 and 17.1.2000 to 15.7.2000 for total 55 and 114 ½ days respectively in Sarkaghat Sub-Division. This document is shown to have been signed by Assistant Engineer and numbers of some muster rolls are mentioned in the same. Such plea having been taken on the fag end of the proceedings can not be accepted unless the maker of the document appears before the court with all those muster rolls which he claims to have relied in order to prepared the mandays chart. In case the petitioner had worked in Sub Division Sarkaghat during the period under reference, why the such fact was not pleaded in the reply? Had the petitioner worked in Sarkaghat Sub-Division, why the respondent did not mention this fact in the reply to the notice (Ext.PW2/A)? Had the petitioner worked in Sarkaghat Sub Division, why this fact was not brought to the notice of Labour Inspector during the conciliation proceedings? Had the petitioner not worked in Dharampur Sub Division, the respondent would not have admitted this fact in reply to the notice. The respondent would have certainly realized the mistake during the conciliation proceedings. The respondent department must have examined the records and only then 11/1998 to 7/2001 was written in the reply to the demand notice. Since conciliation proceedings took place on the basis of the reply before the authorized officer, who was also competent to conduct an inquiry into the facts, therefore, the reliance has to be placed upon the reply to the notice rather than on the mandays chart of Sarkaghat Divisions produced at the fag end of the proceedings. Since the reply to the notice was considered by Labour Inspector-cum-Conciliation Officer during the inquiry and since the respondent did not bring the fact to the notice of conciliation officer that the contents of the reply were wrong, the respondent can not take any advantage by placing a different mandays chart on record when whole exercise was over. The reply to the demand notice is more reliable than the mandays chart. The mandays chart has not been proved on the record by the officer, who prepared the same. The maker of this mandays chart has not faced cross-examination on the same. He has not produced the entire muster rolls before the court and therefore, the mandays chart prepared at the fag end of the proceedings can not be relied upon and given weight-age over the reply to the demand notice which was filed with the conciliation officer.

10. The respondent although has issued the mandays chart of the petitioner regarding the work in Dharampur Sub Division yet the contents of the reply to the demand notice can safely be taken into account by this court. It is averred in the reply to the demand notice that the petitioner has worked *w.e.f.* 11/1998 to 7/2001 in continuity. Therefore, it is well understood that he has

worked for more than 240 days before his termination in past 12 calendar months. Thus the violation of Section 25-F of the Act is made out in this case.

11. Shri Anil Kumar Sharma (RW1) was subjected to cross-examination on the affidavit tendered by him on the record as Ext. RW1/B. He had admitted that the workmen mentioned in paras 3 and 4 of the petition are still working with the department. When paras no.3 and 4 of the claim are considered, these paragraphs show the names of those workmen who were junior to the petitioner. Thus it is also proved that the workmen junior to the petitioner were retained when the services of the petitioner were orally terminated. It is also proved that the respondent has engaged fresh hands after the termination of the petitioner. Therefore, the petitioner has been able to establish that the respondent has caused the violation of Sections 25-G and 25-H of the Act. The petitioner has also placed on record mandays chart of one Shri Shashi Kant s/o Shri Bihari Lal who was engaged in January 2000 when the petitioner was still in service and this Shashi Kant is still in services as is clear from his mandays chart tendered on the record as Ext. PB. Thus violation of Section 25-G of the Act is fully established in this case.

12. Though there has been violation of Sections 25-F, 25-G and 25-H of the Act in this case yet it is an admitted fact that the demand has been raised after thirteen years. There is no explanation whatsoever coming forth from the petitioner to justify this delay. In the absence of any such explanation, it is held that this delay has proved fatal to the case of the petitioner and it has come in the way of the petitioner's reinstatement. It is settled law that a workman who sleeps over his right for years together can not claim reinstatement but the relief can be molded into grant of compensation by the court. Taking into account the number of years passed in between, it will be appropriate and just that the petitioner is held entitled to receive compensation of ₹75,000/- in lieu of his reinstatement and other benefits. All the issues are decided accordingly.

#### RELIEF

13. In view of my discussion on the above issues, it is held that though there had been violation of Sections 25-F, 25-G and 25-H of the Act in this case but the petitioner had raised demand after a gap of more than 13 years and his claim for reinstatement has therefore, been vitiated by delay and laches, hence, the reinstatement and other consequential benefits can not be granted in his favour but he is held entitled for compensation to the tune of ₹75,000/- (Rupees seventy five thousand only), which would be paid within four months by the respondent from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

14. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 16th day of November, 2022.

Sd/-  
(HANS RAJ),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala (H.P.)  
(Camp at Mandi)

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT MANDI)**

Ref. No. : 728/2016  
Date of Institution : 06-10-2016  
Date of Decision : 16-11-2022

Shri Raj Kumar s/o Shri Chand Ram, r/o Village Chah, P.O. Mandap, Tehsil Sarkaghat,  
District Mandi, H.P. . . . . . *Petitioner.*

*Versus*

1. The Engineer-in-Chief, H.P.P.W.D. Nirman Bhawan, Shimla, District Shimla, H.P.
2. The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. . . . . . *..Respondents.*

**Reference under section 10 (1) of the Industrial Disputes Act, 1947**

For the petitioner : Sh. N.L. Kaundal, Ld. AR  
For the respondent(s) : Sh. Anil Sharma, Ld. Dy. D.A.

**AWARD**

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

**“Whether alleged termination of services of Sh. Raj Kumar s/o Sh. Chand Ram, Vill. Chah, P.O. Mandap, Tehsil Sarkaghat, Distt. Mandi, H.P. during 10/2000 by (1) the Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla (2) the Executive Engineer, HPPWD, Division Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages during the 11/1998 to 10/2000, only for 612.5 days, and has raised his industrial dispute vide demand notice dated 8.6.2015 after 15 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”**

2. After receipt of the reference, a corrigendum reference has been received from the appropriate Government on 23<sup>rd</sup> May, 2019 for adjudication, which reads as under:—

**“Whereas, a reference has been made to the Ld. Labour Court-cum-Industrial Tribunal, Dharamshala, District Kangra, H.P. vide this office notification of even no. dated 27-09-2016 for legal adjudication. However, inadvertently the correct facts could not be mentioned about the father's name and address of the workman in the said notification. Therefore, the father's name and correct address of the workman may be read as “Shri Raj Kumar s/o Shri Sher Singh, r/o Village Sanour, P.O. Sari, Sub Tehsil Dharampur, District Mandi, H.P.” instead of “Shri Raj Kumar s/o Shri Chand**

**Ram, r/o Village Chah, P.O. Mandap, Tehsil Sarkaghat, District Mandi, H.P.” as alleged by workman”**

3. The petitioner has come up with the claim that he was engaged as a daily waged beldar on muster roll *w.e.f.* 11/1998 and worked in the aforesaid capacity till 10/2000. He completed more than 240 working days in each calendar year during his service and his retrenchment by way of oral order was in violation of Section 25-F of the Act. Apart from this, the respondent did not follow the principle of ‘last come first go’ as junior workmen namely Shri Bihari and others were retained and thus violation of Section 25-G of the Act also took place. After the services of the petitioner were terminated, fresh hands were engaged in the year 2003, 2004, 2007 and 2011 without giving the petitioner an opportunity of re-employment on priority basis and thus violation of Section 25-H of the Act took place. The petitioner raised dispute before Labour Officer Mandi by way of demand notice in which conciliation took place but the services of the petitioner were not re-engaged, hence the reference. The petitioner has submitted that there are instance where delay of more than 10 years was also not considered fatal and services of the workman was also ordered to be reinstated with all the benefits.

4. The respondent has resisted and contested the claim and admitted the period during which the petitioner had worked as daily waged beldar. The respondent has pleaded that the petitioner had left the job at his own and his services were never terminated. So far as the juniors workmen to the petitioner are concerned, the respondent pleaded that since those workmen had not left the work and worked in continuity, therefore, there was no parity between the petitioner and those workmen hence, there was no violation of Section 25-G of the Act. No fresh hands are claimed to have been engaged hence, the respondent has not caused any violation. The case of the petitioner is said to be vitiated by inordinate delay in raising the demand. It is submitted that the petitioner is not entitled for reinstatement as well as other benefits including that of compensation.

5. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition. He has denied that he left the work at his own but explained that his services were infact terminated by the respondent.

6. From the pleadings of the parties and language of the reference, following issues were framed for determination on 12.12.2019:—

1. Whether termination of services of the petitioner during October, 2000 by the respondent is illegal and unjustified, as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable, as alleged? . . .*OPR.*
4. Whether the claim petition suffers from delay and laches, as alleged? . . .*OPR.*  
Relief.

7. I have heard learned Authorized Representative for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

8. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

- Issue No.1 : decided accordingly  
Issue No. 2 : decided accordingly



Issue No. 3 : No

Issue No. 4 : decided accordingly

Relief. : Petition is **partly allowed** Warding lump sum compensation of ₹1,50,000/- per operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUES No.1 to 4

9. All these issues taken up together for the sake of convenience and to avoid the repetition of evidence.

10. The reference received from the appropriate Government for adjudication finds a specific reference of the delay of fifteen years in raising the demand. The appropriate Government has sought adjudication on the impact of the delay of 15 years in raising the demand, and therefore, the court is bound to examine the question of delay and its effect upon the claim.

11. The petitioner has admittedly worked *w.e.f.* 11/1998 to 10/2000 with the respondent. This fact is prove from the mandays chart of the petitioner tendered on record as Ext.RW1/C. He has worked for total 612.5 days as is mentioned in the reference itself. In the year 2000 he has worked for 10 months for 232 ½ days. In December and November 1999 the petitioner has worked for 31 and 30 days respectively. Thus when the number of mandays are counted in reverse order, it is proved that the petitioner has worked with more than 240 days in preceding 12 calendar months of the year before his alleged termination. In this manner, the violation of the provisions of Section 25-F is attracted. In such a situation, in case, the respondent intended to terminate the services of the petitioner it was necessary to comply with the provisions contained in Section 25-F of the Act.

12. The respondent has come up with the plea that the services of the petitioner were never terminated and he had himself left the work at his own. In this manner, the respondent has taken the plea of abandonment of the work by the petitioner. It may be stated here that plea of abandonment is plea of fact and the entire onus upon the employer. Law is well settled on abandonment of job by a workman. The Hon'ble High Court H.P. **In Narain Singh vs. State of Himachal Pradesh and Ors., Civil Writ Petition No.3634 of 2009 decided on 21 June, 2016** was pleased to hold that voluntarily abandonment of work by workman is required to be established by way of cogent and reliable evidence by the employer. The Hon'ble High Court of H.P. in another judgment titled **State of H.P. and Anr. vs. Partap Singh reported in 2016 Vol.6 ILR (1314)** again dealt with the plea of abandonment of job and went to the extent of saying that even if a workman has left job at his own even then the employer was not discharged of his onus. It was the duty of the employer in such situation to issue notice upon the workman asking him to resume the duties, and in case, he still does not report to his duties, some disciplinary inquiry should be conducted against him as such a conduct amounts to gross negligence. It was held that evidence to this effect has to be led by the employer. In all aforementioned cases, it was repeatedly held by the Hon'ble Courts that in case the employer does not lead any such evidence, the plea of abandonment was not established. In the case in hand, the respondent has also not led any evidence which could be termed as cogent, convincing and reliable to prove the plea of abandonment. Shri Anil Kumar Sharma (RW1) in his affidavit Ext.RW1/B has merely said that the workman has abandoned his job at his own. He has not proved any notice issued to this workman after he had started absenting from his duties asking him to resume his work. Shri Anil Kumar Sharma has also not produced any material on the record to suggest that since the petitioner did not join the duties even after service of notice, therefore, an inquiry was conducted and a satisfaction to the effect that the petitioner had no intention to report and resume his duties was obtained. When such is the situation the plea of

abandonment as raised by the respondent has not been established. It is proved that the services of the petitioner were terminated without complying with the provisions contained in Section 25-F therefore, the petitioner is entitled to the relief as per law.

13. The petitioner has further alleged that violation of Section 25-G has also taken place. To prove this plea, the petitioner has placed on record mandays chart of one Shri Shashi Kant who has also worked with the respondent and he was engaged in January, 2000. Since the petitioner was terminated in October, 2000, therefore Shri Shashi Kant was junior to him. Shri Shashi Kant had worked in continuity and his services were never terminated therefore, there is violation of Section 25-G of the Act. It was the duty of the respondent to terminate the services of the junior before proceeding to terminate the services of the senior. Even if the petitioner was absenting himself, the respondent was duty bound to call him back and pass a speaking order, in case, the abandonment of the work was made from the facts and circumstances. Only then the petitioner could not have taken the plea of Section 25-G of the Act. It is therefore, established that the workmen junior to the petitioner have also been retained while his services were terminated.

14. The petitioner has alleged that fresh hands were also engaged after the year 2000 by the respondent on daily wages. The respondent has vaguely denied this allegation without any filing any document to show that there was no recruitment/engagement of workmen after October, 2000. Had any such material been placed on record then the position would have been different. Since the respondent is custodian of record therefore, it was for the respondent to discharge the onus. The petitioner has appeared as PW1 in the witness box and filed his detailed affidavit mentioning therein the names of those workmen who were freshly engaged after his services were terminated. Shri Anil Kumar Sharma (RW1) is silent on this aspect. His affidavit Ext.RW1/B does not find mention of the fact that no fresh hand was engaged after the termination of the services of the petitioner. He was subjected to cross-examination wherein he admitted the correctness of mandays of Shri Shashi Pal (Ext. PA). He pleaded his ignorance to the suggestion that fresh hands were engaged by the respondent after the termination of the services of the petitioner. He has categorically admitted that no notice was ever issue to the petitioner when he has absented from his work. There is nothing in the statement of Shri Anil Kumar Sharma to suggest that no fresh hand was engaged after the year 2000 by the respondent. In the absence of any such material, the case of the petitioner to the effect that fresh hands were engaged by the respondent after October, 2000 is also established. Thus the petitioner has been able to prove that there is violation of Sections 25-F, 25-G and 25-H of the Act by the respondent.

15. The learned Deputy District Attorney has argued that the delay of 15 years is fatal and therefore, the petitioner is not entitled for reinstatement. It is by now settled law that a workman can not permitted to sleep over his right for years together. He can not claim reinstatement as a matter of right and the court is within its power to mould the relief and grant him compensation as per the facts and circumstances instead of granting the relief of reinstatement. The Hon'ble High Court of Himachal Pradesh in **Roop Singh vs. Executive Engineer, HPPWD, 2019 (2) ShimLC 645** was pleased to examine the case of workman who had issued demand notice after 12½ years of his alleged retrenchment. The Hon'ble Court while discussing the entire law on the issue was pleased to observe in Para No. 9 that since the petitioner had issued the demand notice after about 12½ years of his alleged retrenchment much water had already flown under the bridge and as such the Tribunal had not committed any error while awarding compensation in lieu of reinstatement and other benefits. In **Prakash Chand vs. Executive Engineer, HPPWD, Civil Writ Petition No. 273/2019 decided on 09 April, 2019**, the retrenched workman had raised the dispute after nine years before this court and he was awarded compensation to the tune of Rs.1 lakh. The Hon'ble High Court in Writ Petition was pleased to affirm the award holding that much water had already flown under the bridge and thus no error was committed by ordering the compensation in place of reinstatement. The Hon'ble High again in **Vyasa Devi vs. Executive Engineer, HPPWD, Civil**

**Writ Petition No.640 of 2019 decided on 24 April, 2019** was pleased to hold in the similar manner and the award of the Tribunal whereby compensation of Rs.60,000/- was awarded in her favour was upheld as there was delay of 11 years in raising the demand by **Smt. Vyasa Devi**.

16. In the case in hand also, the petitioner is proved to have remained silent for a period of 15 years and as he has not raised the dispute at the earliest and therefore, in these facts and circumstances he (petitioner) is not entitled for reinstatement. However, taking into account number of working days and the fact that the respondent has violated the fundamental provisions of the Act, ends of the justice shall be met, in case the petitioner is held entitled to receive compensation to the tune of ₹1,50,000/- (Rupees one lakh fifty thousand only) in lieu of his reinstatement and other benefits. All the issues are decided accordingly.

#### RELIEF

17. In view of my discussion on the above issues, it is held that though there had been violation of Sections 25-F, 25-G and 25-H of the Act in this case but the petitioner had raised demand after a gap of more than 15 years and his claim for reinstatement has therefore, been vitiated by delay and laches, hence, the reinstatement and other consequential benefits can not be granted in his favour but he is held entitled for compensation to the tune of ₹1,50,000/- (Rupees one lakh fifty thousand only), which would be paid within four months by the respondent from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

18. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 16th day of November, 2022.

Sd/-  
(HANS RAJ),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala (H.P.).*  
*(camp at Mandi)*

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**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT MANDI)**

Ref. No. : 687/2016  
Date of Institution : 03-10-2016  
Date of Decision : 17-11-2022

Shri Subhash Chand s/o Shri Uttam Ram, r/o Village Hawaii, P.O. Siyah, Tehsil & District Kullu, H.P. . .Petitioner.

*Versus*

Deputy General Manager, HPTDC Limited, Manali Complex, District Kullu, H.P.

. .Respondent.

**Reference under section 10 (1) of the Industrial Disputes Act, 1947**

For the petitioner : Sh. N.L. Kaundal, Ld. AR

For the respondent : Sh. K.S. Sen, Ld. Adv.

**AWARD**

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

**“Whether termination of the services of Shri Subhash Chand s/o Shri Uttam Ram, r/o Village Hawaii, P.O. Siyah, Tehsil & District Kullu, H.P. w.e.f. 01-01-2012 by the Deputy General Manager, HPTDC Limited, Manali Complex, District Kullu, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/Management?”**

2. A corrigendum reference was also received from the appropriate Government on 21st May, 2018 for adjudication, which reads as under:—

**“Whereas, a reference has been made to the Ld. Labour Court-cum-Industrial Tribunal, Dharamshala, District Kangra, H.P. vide notification of even no. dated 08-09-2016 for its legal adjudication. However, inadvertently the correct facts could not be mentioned about the date of time to time termination in the said notification. Therefore, the same may be read as “05-05-2006 to 31-12-2011 and finally during 01-01-2012” instead of “01-01-2012”.**

3. The petitioner has come up with the claim that his services were engaged on daily wage basis by the respondent w.e.f. 05.5.2006 on muster roll as utility worker and he had interrupted work in the different units of HPTDC Manali like club house, Kunjum Hotel and Rohtang Manalsu upto 31.12.2001. Neither any appointment letter was given to him nor he was permitted to complete 240 days in each calendar year. His services were engaged and disengaged time to time in between 05.5.2006 to 31.12.2011 and finally terminated w.e.f. 01.1.2012 without any show cause, charge sheet etc. Compliance of Section 25-F was also not made. The principle of 'last come first go' was not followed as workmen junior to him having been engaged in the year 2009, 2010 and 2011 namely S/Shri Yog Raj, Tek Chand and Chaman Lal were retained. Even fresh hand namely Sh. Naveen Kumar s/o late Shri Kaka Ram was also engaged w.e.f. 10.5.2012 and violation of Sections 25-G and 25-H, both, took place. The respondent indulged in unfair labour practice by giving fictional breaks to the petitioner from May, 2006 to 31.12.2006 and he was paid bonus etc. The work of the petitioner remained satisfactory but his services were terminated in violation of Sections 25-F, 25-G and 25-H of the Act hence, he was entitled for reinstatement with all the benefits.

4. The respondent has resisted and contested the petition and pleaded that no fictional breaks were given to the petitioner and he was engaged for a particular time period being the utility worker. His services were terminated on the close of every tourist season and his services were availed in the next season, hence there was no requirement of compliance of Section 25-F of the

Act. The persons named in para no.4 are said to have been engaged on daily wage basis and not as utility workers, hence, there was no parity between them and the petitioner. Shri Naveen Kumar s/o late Sh. Kaka is said to have been engaged on compassionate grounds hence, the petitioner could not claim any parity with him. It is submitted that since the petitioner was engaged as a utility worker for seasonal work he was supposed to approach the respondent on the beginning of the next season, and since he did not approach the authority therefore, he could not be engaged hence, he had no case on merits and his claim was liable to be dismissed.

5. The petitioner has filed rejoinder wherein averments made in the petition were reaffirmed and those made in the reply denied. It is submitted that the respondent has not placed on record any document to support the reply and, therefore, the presumptions are in favour of the petitioner.

6. From the pleadings of the parties and language of the reference, following issues were framed for determination on 23.12.2021:—

1. Whether time to time termination of services of petitioner from 05.05.2006 to 31.12.2011 and finally during 01.01.2012 by the respondent is/was illegal and unjustified, as alleged? . . .*OPP*.
2. If issue no.1 is proved in affirmative to what amount of back wages, seniority, past service benefits and compensation the petitioner is entitled to from the above employer/ management? . . .*OPP*.
3. Whether the claim petition is not maintainable? . . .*OPR*.
4. Whether the petitioner has no cause of action? . . .*OPR*.

Relief.

7. I have heard learned Authorized Representative for the petitioner as well as learned counsel for the respondent at length and considered the material on record.

8. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	: Yes
Issue No.2	: Affirmative
Issue No.3	: No
Issue No.4	: No
Relief.	: Petition is <b>partly allowed</b> per operative portion of the Award

#### REASONS FOR FINDINGS

##### ISSUE No.1

9. It may be stated at the very beginning that industrial dispute is a beneficial piece of legislation and the purpose of this beneficial law is to protect the labour class from the exploitation and harassment at the hands of the employer. The further object of this legislation is to ensure that the labour class is not subjected to discriminatory and harsh terms and conditions of employment by their employers. Being a beneficial piece of legislation the presumptions are drawn in favour of the workman and not in favour of the employer. The employer being custodian of all the record pertaining to the employment of the labour class is supposed to produce all the relevant records

before the Labour Court whenever a dispute between the two is subject matter of adjudication. Since the employer engages the workmen, settle the terms and conditions of the employment and pays the wages to such workmen, therefore, it is presumed that the entire record is prepared, maintained and preserved by the employer regarding all such details so that the same could be used during the dispute, if any arises between the two.

10. In the case in hand, Himachal Pradesh Tourism Development Corporation is the respondent and a corporation is governed by laws, by-laws and rules. Such a corporation is also treated as Industry for the purpose of the Industrial Dispute Act, and therefore, the provisions contained in the Industrial Disputes Act are applicable to such an entity. There is a defined procedure for the appointments of the officials or engagements of the workmen and for doing all the acts necessary for the smooth running of the Corporation.

11. The petitioner herein claims specifically that he was engaged as Utility Worker by the respondent *w.e.f.* 05.5.2006 and he worked in Club House Manali, Kunjum Hotel and Rohtang Manals upto 31.12.2011 in the aforesaid capacity. This specific plea was raised by him in the demand notice dated 13.7.2015. The respondent in the reply so filed has admitted that the petitioner was engaged as a Utility Worker. Thus one fact is established from the pleadings itself that the petitioner was engaged as a Utility Worker. The pleadings are at variance after this point. The petitioner has claimed that he was engaged on daily wage basis and the respondent claims in the reply that the petitioner was engaged as Utility Worker for a specific period and as a seasonal worker only. It is now for this court to find out from the material placed before it as to whether the petitioner was engaged as Utility Worker on daily wage basis or he was engaged for specific period on seasonal basis.

12. Since the respondent corporation has come up with the specific plea that the petitioner was engaged as a Utility Worker for a specific period on seasonal basis, therefore, it was the duty of the corporation to place on record any document/resolution/scheme of the corporation showing that the corporation was doing a seasonal work only. After all, the corporation is manned by the team of officers and there is a complete mechanism to run such a corporation in a smooth manner. Everything is documented before implementation. In case, the work of the corporation was seasonal, such fact must have been recorded in any of the document of the corporation. Such document could have been placed on the records of this case. The court would have thus come to know about the same. No such document had been placed on the record to prove that the respondent was involved in seasonal nature of the work. If the services of the petitioner were engaged for a specific period, any engagement letter carrying the terms and conditions of the job or any undertaking obtained from the petitioner while he was engaged to the effect that he was supposed to be relieved after the season was over and he could not claim any right of being retained in the services should have been placed on the record by the respondent to justify its stand. No such document has been placed on the record. How the petitioner came to be engaged? No material has been placed on the record. Whether any advertisement took place or the petitioner joined the corporation silently? Nothing is clear from the material placed on the record by the respondent. Whether any such documentation took place in the corporation before engaging the seasonal workers or not is again not clear. Since a large number of workmen are employed in the corporation it is but natural that policy decisions are taken by the officers manning the corporation. The implementation comes the second stage after the documentation. No material has been placed on the record to prove that it was decided by the corporation that the services of the petitioner and other similarly situated workmen shall be availed only for a particular season. The respondent has simply alleged that the petitioner was engaged for a specified period and he was seasonal worker. When there is no material on the record to substantiate the plea, the reply filed by the respondent can not be believed.

13. The mandays chart of the petitioner had been placed as Ext.RW1/B and when this document is carefully gone through, it does not become clear as to which season it pertains. In

2006 the petitioner has worked for only three months from May to July. In the year 2007 he was made to work for four months i.e. from April to July. In the year 2008, the petitioner was made to work from June, 2008 to December 2008 for 194 days. In the year 2009, the petitioner was not made to work even for a single day. In the year 2010, the petitioner worked for three months i.e. from May, June and July and in the year 2011 the petitioner has worked for 162 days commencing from April to December except the months of August and September. Thus it is not clear as to how the tourist season was decided by the corporation. In the year 2011, the petitioner has worked for 162 days. No document regarding other similar situated Utility Workers has been placed on the record by the respondent to show that they were also subjected to similar treatment, and therefore, no pick and choose amongst the workmen in the matter of the engagement took place. It therefore, can not be said from the perusal of this mandays chart that the engagement of the Utility Workers was done only for a particular season and thereafter they were relieved of their duties and whenever, a new season started new workmen were engaged.

14. The respondent has tendered on record a seniority list of Utility Workers as it stood on 31.12.2019. This tentative seniority list of workmen in itself shows that the work of the Utility Workers was neither casual nor seasonal. Had the work been seasonal there was no reason to prepare the seniority list. Seniority list is prepared in those case where a valuable right is created in favour of the worker on account of his seniority over the others. In case, the Utility Workers are engaged on seasonal basis then there is no need to prepare the seniority list as on arrival of new season a fresh requisition is made and new workmen who responds to such a demand are engaged. Once the respondent has prepared a seniority list, it means that the respondent has maintained the record of the Utility Workers *w.e.f.* 1991, as Shri Bishan shown at serial no. 1 of this seniority list has been shown as engaged in the year 1991 for the first time. He has been shown to have been still working as per the seniority list dated 31.12.2019. At serial no.25 of this seniority list, Shri Mast Ram s/o Shri Projoo Ram is shown to have been engaged on 22.9.2007. He is still working as his name figures in the seniority list of 2019. Since the petitioner was admittedly engaged on 05.5.2006, therefore, the Utility Worker shown at serial no.25 in the list is junior to the petitioner and despite of this he is still working. Thus, this seniority list produced by the respondent show that the engagements of the Utility Workers in the corporation was not for a specific period. Had the engagement of any workman been for a specific period then there was no question of preparing the seniority list and showing them in the list right from the year 1991 to 2019. This seniority list therefore, goes against the case of the respondent and it is proved that the Utility Workers were not engaged for one season only but such workers were repeated for all the times and for this purpose a seniority list was prepared. It is also not the case of the respondent that there were two categories of the Utility worker, I.e one class of the Utility worker was engaged for long term and their seniority was maintained and the other class of the Utility Worker was a temporary class engaged for a particular season and their job ended on the close of the season and thereafter, new engagement took place in the next seasons. It is also not the case of the respondent that the petitioner belonged to the second category and therefore, he could not get any benefit on the basis of the seniority listed tendered in the court by the respondent itself.

15. The statement of Shri Baldev Singh, Deputy General Manager is very relevant for the purpose of present controversy. He has tendered in evidence his affidavit Ext.RW1/A, mandays chart of the petitioner as Ext.RW1/B and the seniority list of utility workers Ext.RW1/C. In the very first line of his cross-examination, he has admitted that the petitioner was engaged on muster roll basis on 05.5.2006. He has further admitted that permission is received from the Directorate to manage such official. He has categorically admitted that the petitioner had worked till 31.11.2011. He volunteered to speak that the breaks were given to the petitioner. It means that the petitioner was given breaks and thus his engagement was not for a specified time. Moreover, when this witness has categorically admitted that the petitioner was engaged on muster roll basis on 05.5.2006, it is very much clear that the engagement was not for a specified period. By placing on record the seniority of utility workers (Ext.RW1/C) the respondent has proved the case of the

petitioner. As already observed hereinabove, the seniority list is prepared in respect to those workmen who are supposed to be engaged for a long time. The purpose of maintaining the seniority list is to ensure that no workman who was engaged later in time is given preference over a workmen engaged prior in time. Further, the purpose of seniority list is to ensure that the principle of 'last come first go' is followed and all those rights that have accrued to a workmen under the Industrial Disputes Act are given to him by taking into account his seniority amongst all workmen. Had the engagement of the Utility Workers been for a specified period then there was no reason to prepare the seniority list. This seniority list specifically shows that it deals with the Utility Workers. The petitioner is also a Utility Worker. It is not the case of the respondent that the petitioner belonged to some other Once a seniority list is prepared the ultimate inference this court can draw is that the engagement of the utility worker was not for a specified period but it very much clear from this list that the workmen shown at serial no.1 was engaged in the year 1991. This seniority list covered the workers who have been engaged till the year 2019. Since the petitioner was engaged in the year 2006, therefore all these workmen who are junior to him should have been disengaged first before terminating his services. In case, the petitioner was given work for a specified time, in that event it was the duty of the respondent to have given preference to the petitioner and not to engage fresh hands as has been done in the present case. The list suggests that the fresh hands have been engaged every year and even after the engagement of the petitioner.

16. The respondent has come up with plea that the petitioner has himself not contacted for the work, and therefore, and no further work was given to him. This plea is without any substance as it duty of the respondent to have invited the petitioner to join the work, in case, he was given work for specified period so that priority can be given to him on fresh hands. There is no document on the record in the shape of any notice which would show that the petitioner was called back by the respondent in the year 2006 but he did not report for the work and therefore, fresh hands had to be recruited. Thus the respondent is proved to have violated the provisions contained in Section 25-G of the Act by retaining the juniors while disengaging the services of the petitioner. The respondent at the same time is proved to have violated the provisions contained in Section 25-H of the Act by engaging fresh hands without giving the petitioner an opportunity of the work.

17. Once the respondent is proved to have violated the provisions contained in Sections 25-G and 25-H of the Act the petitioner is entitled for reinstatement as he has raised the demand within the reasonable time, and moreover, there is no reference to this court to examine the effect of delay, if any. Since the petitioner was disengaged on 31.12.2011 and thereafter lots of fresh hands were re-engaged therefore, the petitioner has approached the authorities by way of demand notice on time and he is entitled for reinstatement. Issue no.1 is held accordingly.

ISSUES No. 3 & 4

18. In view of my above discussions on the above issue no.1 the petition is maintainable as well as petitioner has cause of action to file the present case, hence both these issues are held in favour of the petitioner.

ISSUE No. 2

19. In view of my above discussions on issue no.1, the petitioner is held entitled for reinstatement with seniority and continuity in service. Since the petitioner has not led any cogent and convincing evidence that he remained out of work during this period therefore he is not entitled for the back wages. This is held in affirmative.

#### RELIEF

20. In view of my above discussions, the claim petition succeeds in part and is partly allowed. The respondent is directed to reinstate the services of the petitioner forthwith. The



petitioner is entitled for seniority and continuity in service from the date of his illegal termination except back wages. Parties are left to bear their costs.

21. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 17th day of November, 2022.

Sd/-  
(HANS RAJ),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala (H.P.).*  
*(camp at Mandi)*

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**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT MANDI)**

Ref. No. : 441/2015  
Date of Institution : 29-10-2015  
Date of Decision : 23-11-2022

Sh. Lachman s/o Sh. Sarvan, r/o Village Kotti, P.O. Kiti, Tehsil & Distt. Chamba, H.P.,  
Now deceased through LRs:—

1. Smt. Dholo Devi, w/o Lachman, r/o Village Kotti, P.O. Kiti, Tehsil & Distt. Chamba, H.P.
2. Sh. Jaggo, s/o Lachman, r/o Village Kotti, P.O. Kiti, Tehsil & Distt. Chamba, H.P.
3. Ms. Bhani, d/o Lachman, r/o Village Kotti, P.O. Kiti, Tehsil & Distt. Chamba, H.P.
4. Ms. Durgor, d/o Lachman r/o Village Kotti, P.O. Kiti, Tehsil & Distt. Chamba, H.P.
5. Mr. Yog Raj, r/o Village Kotti, P.O. Kiti, Tehsil & Distt. Chamba, H.P.

*. .Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D Division, Bharmour Sub Division Rakh now in  
Division Chamba, Tehsil & Distt. Chamba, H.P. *. .Respondent.*

**Reference under section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner's LRs : Shri Akshay Jaryal, Ld. Adv.

For the Respondent : Shri Anil Sharma, Ld. Dy. D.A.

### AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

**“Whether the industrial dispute raised by the worker Shri Lachman s/o Shri Sarwan, r/o Village Kotti (Kiri), P.O. Kiri, Tehsil & District Chamba, H.P. before the Executive Engineer, H.P.P.W.D. Division Bharmour, District Chamba, H.P. vide demand notice dated 08.04.2008 regarding his alleged illegal termination of services during July, 2002 suffers from delay and latches ? If not, whether termination of the services of Shri Lachman s/o Shri Sarwan, r/o Village Kotti (Kiri), P.O. Kiri, Tehsil & District Chamba, H.P. by the Engineer, H.P.P.W.D. Division, Bharmour, District Chamba, H.P. during July, 2002 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified ? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”**

2. After receipt of the above reference, a corrigendum reference dated 4th February, 2019 has also been received from the appropriate Government which is given below:

**“Whereas, a reference has been made to the Ld. Labour Court-cum-Industrial Tribunal, Dharamshala, District Kangra, H.P. vide notification of even no. dated 21.10.2015 for legal adjudication. However, inadvertently the correct facts could not be mentioned about the date of termination of workman in the said notification. Therefore, the date of termination of the workman maybe read as “November, 2002” instead of “July, 2002”.**

3. The petitioner namely Sh. Lachman has filed this claim in support of aforesaid reference. Before proceeding further, it may be stated here that this petitioner has expired during the proceedings, and therefore his legal representatives have been brought on the record and the claim has been pursued by them.

4. The petitioner had averred in his claim that in the year 1999 he filed Original Application (D) No.48/1999 before Hon'ble Administrative Tribunal Dharamshala with regard to the fictional breaks and it was disposed of on 27.11.2001 with the directions to the respondent that the petitioner be re-engaged as per the seniority and on availability of work. Infact, the respondent was initially engaged as daily wage beldar in the year 1997. He was re-engaged after the orders passed by the Hon'ble Administrative Tribunal and worked until his services were disengaged orally in the month of November, 2002. As per the petitioner, he had completed 240 working days in each calendar year and his services could not be terminated without serving a notice under Section 25-F of the Act. Apart from this, the workmen junior to him namely S/Shri Dharmu, Yugal Kishore and Raj Kumar were retained and fresh hands were also engaged resulting breach of provisions contained in Sections 25-G and 25-H of the Act. On such averments, the petitioner has prayed for his reinstatement, seniority, back wages and all other admissible benefits.

5. As aforesaid, since the petitioner has expired and is being represented by his legal heirs, the prayer for reinstatement therefore, becomes redundant and the claim has to be considered to a limited extent to find out as to whether the legal heirs of the petitioner are entitled to receive compensation as per the facts and circumstances of the case or not.

6. The respondent has resisted and contested the petition and submitted that the petitioner has infact worked intermittently with the respondent *w.e.f.* December 1997 to September 1998 and he thereafter left the work at his sweet will. He came to work again in September 2001 and worked till November 2002 and that too intermittently and neither completed 240 days at in any of the calendar year nor his services were terminated at any point of time. It is further case of the respondent that the petitioner left the work at his own in November 2002 and no person junior to him was retained. It is also submitted that no fresh hands has been engaged after he left the job, and therefore, the petitioner was not entitled for nay relief and the petition was without any merits and liable to be dismissed.

7. The petitioner filed the rejoinder and reaffirmed the averments made in the petition and denied those made in the reply. According to him, the order passed in the aforesaid original application by Hon'ble Administrative Tribunal has not been rightly understood and interpreted by the respondent.

8. From the pleadings of the parties, following issues were framed on 07.3.2018 for determination:

1. Whether the industrial dispute raised by petitioner *via* demand notice dated 08-04-2008 qua his termination of service during July, 2002 by respondent suffers from the vice of delay and laches as alleged? . . .*OPP.*
2. Whether termination of the services of petitioner by the respondent during July, 2002 is/was illegal and unjustified as alleged? . . .*OPP.*
3. If issue no.1 or issue no.2 are proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*

Relief.

9. It is relevant to mention here that after receipt of corrigendum reference dated 4th February, 2019 from the appropriate Government as well as brought on record the legal heirs of the deceased petitioner, issues no.1 and 2 were recasted on 06.11.2019 which read thus:—

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 08-04-2009 qua his termination of service during November, 2002 by respondent suffers from the vice of delay and laches as alleged. If so, its effect? . . .*OPP.*
2. Whether termination of the services of petitioner by the respondent during November, 2002 is/was improper and unjustified as alleged? . . .*OPP.*

Relief.

10. I have heard learned counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

11. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	: decided accordingly
Issue No.2	: decided accordingly

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Issue No.3	: decided accordingly
Issue No.4	: No
Relief.	: Petition is partly allowed awarding lump sum compensation of Rs.75,000/- per operative portion of the Award to the legal heirs of the petitioner.

### REASONS FOR FINDINGS

#### ISSUES No.1 & 2

12. Both these issues taken up together for the sake of convenience and to avoid the repetition of evidence.

13. The petitioner appeared as PW1 in support of his case and tendered on record his affidavit Ext.PW1/A. Apart from this, he tendered on record copy of demand notice Ext.PW1/B and copy of judgment Ext.PW1/C. He has tendered on records copy of reference Ext.PW1/D and month-wise seniority list Ext.PW1/E. He tendered on record another judgment Ext.PW1/F. On the other hand, the respondent examined Shri Sanjeev Mahajan, Executive Engineer, Bharmour as RW1 in the witness box and he has tendered on record his affidavit Ext.RW1/A and mandays chart of the petitioner Ext. RW1/B. He has tendered mandays charts of Shri Yugal Kishore and Sh. Dharmu as Ext.RW1/C and Ext.RW1/D.

14. The mandays chart of the petitioner has been filed and proved on the record by both the parties as Ext.RW1/B and Ext.PW1/E. Both documents exhibit the same position. It is clear from bare perusal of the mandays chart that the petitioner was initially engaged in December 1997 and he worked till September 1998 and thereafter he did not work at all in the years 1999 and 2000. He is said to have filed Original Application No. 48/1999 copy of the judgment whereof has been tendered on record as Ext.RW1/F. When this document is carefully gone through it is clear that this was a joint application filed by as many as 12 persons including the present petitioner and it was disposed of on 27.11.2001. It is further clear that only prayer made before the Hon'ble Tribunal was that the respondent be directed to re-engage the services of the applicants as and when the work and funds were available. The prayer was accepted and the Hon'ble Tribunal directed the respondent to re-engage the services of all the applicants as per the seniority as and when the work and funds were available. The tone and tenor of this judgment/order shows that the petitioner was out of work and he therefore, filed original application in the year 1999 which was decided on 27.11.2001. Prior to this, the petitioner was already re-engaged and he had worked in September and October 2001 for 10 days each. Even in November, he is shown to have worked for 12 ½ days. Thus the original application was not filed in order to condone the fictional breaks as has been claimed in the petition but it was for re-engagement. In this original application the legality of the termination of the services of the petitioner was not examined but the prayer was limited to the extent that the petitioner and others be re-engaged as and when work and funds were available subject to their seniority. This order therefore, means that the termination of the services of the petitioner in September 1998 was not touched by the Hon'ble Administrative Tribunal but the respondent was reminded of the provisions contained in Section 25-H of the Act. It is for this reason that it was ordered that whenever work and funds were available the petitioner be re-engaged as per his seniority. Meaning thereby, when fresh hands were to be engaged by the respondent, priority was to be given to the petitioner by taking into account his seniority among the already retrenched persons so that the provisions of Section 25-H are complied with. Thus the gap/break in between December 1997 to September 2001 i.e. for more than two years was never bridged by the operation of the order passed by the Hon'ble Administrative Tribunal. When no order condoning the alleged time to time termination was passed, the petitioner can not be claimed his seniority from December 1997 when he was initially engaged. As aforesaid, the gap of more

than two years could not be bridged in any manner and therefore, there is no question of continuity of the services *w.e.f.* December 1997. It is now for this court to examine number of the working days of the petitioner *w.e.f.* September 2001 till November 2002 and find out whether he has worked for more than 240 days or not. When the mandays chart is examined it is clear that the petitioner has worked for 89 and 44 ½ days in the years 2001 and 2002 and he has thus failed to work for more than 240 days as was required to comply with the provisions contained in Section 25-F of the Act. When such is the situation it can not be said that the respondent has violated the provisions of Section 25-F of the Act at any point of time.

15. The petitioner has come up with the plea that the respondent has engaged fresh hands after his termination and he was not given an opportunity to work. The respondent has come up with the plea that petitioner himself left the work in the year November 2002. No evidence has been led by the respondent to prove any such abandonment and therefore, the presumption goes that the services of the petitioner were terminated and he had not abandoned the work as claimed by the respondent. The mandays chart of Dharmu has been placed on record as Ext.RW1/C which shows that he was engaged in January 2003. This Dharmu was thus engaged after the services of the petitioner were terminated in November 2002 and it was bounden duty of the respondent to call for the petitioner by taking into account his seniority before engaging Shri Dharmu. Since the respondent has not placed on record any material to show that the petitioner was called in compliance to the provisions contained in Section 25-H of the Act therefore, it is proved that the respondent has violated the provisions of Section 25-H of the Act as the respondent was duty bound to give an opportunity to the petitioner to return to the work before engaging Shri Dharmu. The violation of Section 25-H is therefore proved. So far as violation of Section 25-G is concerned, the same is not established as mandays chart of Shri Yugal Kishore shows that he was engaged in the year 1998 and thus he was not junior to the petitioner as the service period of the petitioner is now been counted after September 2001 when he was re-engaged after the break which was never condoned. So far as the statement of RW1 Shri Sanjeev Mahajan is concerned, he has failed to bring on record any material during his cross-examination to suggest that the petitioner was called to work when he himself had abandoned the work. He has failed to place on record any material to show that the petitioner was again recalled when Shri Dharmu was engaged. He has admitted that both Shri Yugal Kishore and Shri Dharmu have been regularized. So far as cross-examination conducted upon the petitioner is concerned, he has tried to make out a case that he had never left the work but his services were time to time terminated. For the reasons aforesaid, he has failed to prove the same. Otherwise also, since the petitioner is no more he can not be reinstated. It has been held by the Hon'ble Supreme Court of India in **State of Uttar Pradesh and Others vs. Parmanand Shukla (Dead) Through Legal Representatives** reported in (2014) 16 Supreme Court Cases 138, where a workman has expired and can not be reinstated for this reason, the compensation can surely be paid to his legal heirs. In the case in hand the petitioner has expired therefore, his case for reinstatement can not be considered. Moreover, there is delay in raising the demand as the demand notice was issued after six years. Taking into account all these facts and circumstances and the fact that there is violation of Section 25-H of the Act, the ends of justice shall be met, in case, a sum of Rs.75,000/- is awarded as compensation in favour of five legal heirs of the deceased petitioner. In other words they will get Rs.15,000/- each. Both these issues are decided accordingly.

ISSUE No. 3

16. In view of the above discussion the legal heirs of the deceased petitioner are held entitled for compensation to the tune of ₹75,000/- (Rupees seventy five thousand only) *i.e.* equal share of each legal heirs, hence this issue is decided accordingly.

ISSUE No.4

17. Since the claim petition has filed in pursuance to the reference received from the appropriate Government, therefore, claim petition is maintainable, hence this issue is held decided against the respondent.

#### RELIEF

18. In view of my discussion on the above issues, it is held that though there had been violation of Section 25-H of the Act in this case. However, the petitioner has died, therefore, reinstatement can not ordered. In such a situation, the legal heirs of the deceased petitioner are held entitled for compensation to the tune of ₹75,000/- (Rupees seventy five thousand only) in equal share of each legal heirs, which would be paid within four months by the respondent from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

19. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 23rd day of November, 2022.

Sd/-  
(HANS RAJ),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala (H.P.).*

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**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT MANDI)**

Ref. No. : 114/2015

Date of Institution : 13-3-2015

Date of Decision : 26-11-2022

Shri Murari Lal s/o Shri Thakur Dass, r/o Village Khudhar, P.O. Bassi, Tehsil Joginder Nagar, District Mandi, H.P. . *Petitioner.*

*Versus*

The Managing Director (Project), Beas Valley Power Corporation Limited Bhatha, Joginder Nagar, District Mandi, H.P. . *Respondent.*

**Reference under section 10 (1) of the Industrial Disputes Act, 1947**

For the petitioner : Sh. N. L. Kaundal, Ld. AR

For the respondent : Sh. Anand Sharma, Ld. Adv.

#### AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):—

**“Whether termination of the services of Shri Murari Lal s/o Shri Thakur Dass, r/o Village Khudhar, P.O. Bassi, Tehsil Joginder Nagar, District Mandi, H.P. w.e.f. 31-12-2012 by the Managing Director (Project), Beas Valley Power Corporation Limited Bhatha, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”**

2. The case of the petitioner as made out from the claim is that he was engaged as daily waged beldar against vacant post w.e.f. 04.1.2008 without any appointment letter by the respondent through Senior Executive Engineer and he worked in the aforesaid capacity in the Sub Division No.16 under Assistant Engineer Shri Surinder Thakur and Junior Engineer Sh. Dev Sharma. He completed 240 days in each calendar year and more than 300 workmen were engaged by the respondent at that time in the same way. His services were verbally and wrongfully terminated by the Assistant Engineer w.e.f. 31.12.2012 in violation to the provisions contained in Section 25-F of the Act. New workmen were engaged in the place of the petitioner and other workmen under political pressure. The workmen junior to the petitioner were retained and fresh hands were engaged and thus the respondent violated the provisions contained in Sections 25-G and 25-H of the Act and the petitioner was compelled to raise the demand by way of demand notice and when the matter was not settled, the reference was made by the appropriate Government. As per the petitioner, he was not gainfully employed anywhere since the date of his illegal termination and in these facts and circumstances the respondent be directed to reinstate the petitioner and give him the benefit of seniority and continuity in service and back wages apart from paying him litigation costs.

3. The respondent has resisted and contested the claim and denied the case of the petitioner in toto. As per the respondent, the petitioner had never worked as a daily wage beldar and his services were never taken by the respondent at any point of time. Not even a single workman was engaged by the respondent on daily wage basis and the entire work was got conducted by engaging the services of private contractors on outsource basis. Neither the attendance register qua the petitioner was maintained at any point of time nor any payment was released directly to him. It is submitted that neither any fresh workman was engaged nor any other workman was retained as claimed. At the end, the respondent has submitted that claim was absolutely baseless, and therefore, it be dismissed.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply. It is submitted that the respondent was duty bound to keep the records of the contract workers.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 01.12.2015:—

1. Whether termination of the services of petitioner by the respondent w.e.f. 31-12-2012 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*

Relief.

6. I have heard learned Authorized Representative for the petitioner as well as learned Counsel for the respondent at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	: No
Issue No.2	: Negative
Relief.	: Petition is <b>dismissed</b> per operative portion of the Award

### REASONS FOR FINDINGS

#### ISSUES No.1 & 2

8. Both these issues are taken up together for the sake of convenience and to avoid the repetition of evidence.

9. Initial onus is upon the petitioner. He is supposed to prima-facie prove that he has worked on daily wage basis and in continuity *w.e.f.* January 2008 to 31.12.2012. The petitioner has sworn his own affidavit Ext.PW1/A which is replica of the claim petition. He has placed on the record the information received by him from the respondent through RTI as Ext.PW1/B. When the information Ext.PW1/B is carefully examined it is clear that some daily wages workmen were engaged through contractors by the respondent in the year 2013 and 2014. There is no document on the record to suggest that daily wagers were engaged by the respondent in between 2004-2011. The petitioner alleges that he had worked with several other similar situated workmen and they all were retrenched without following the process of law. The petitioner has not examined any of such workman who had met the same fate. In case hundreds of the workmen were aggrieved from the action of the respondent in terminating their services, anybody would have come forward to support the case of the petitioner and deposed on oath that he was also aggrieved in the similar manner and his services were also retrenched without following the process of law. No muster roll was tendered on the record and no mandays chart has been filed on the record. The petitioner has obtained the information under RTI from the respondent and the respondent has not supplied any muster or the mandays chart of the petitioner. The plea of respondent is that not even a single workman was engaged directly by the respondent but the work was got done through contractors and payment was made directly to the contractor. The respondent has placed on record list of the contractors engaged *w.e.f.* 2003 till date and there are as many as 51 contractors shown in this list. The petitioner is not named anywhere. In the year 2004 and 2005 several other contractors were engaged and this similar list has been placed on record. Similar is the position of 2005-2006, 2006-2007, 2007-2008, 2008-2009 and upto the year 2015-2016. The details of the works got done have also been filed on the record and it is clear that the payment of lumps sum amount was made to various contractors by the department. The respondent has tendered on record details of work executed as Ext.RW1/B and it also shows that payment has been made to various contractors and the record is running in several pages. It shows that the respondent has got entire work executed through contractors and the contractors have supplied their own labour. It is the case of the respondent that the petitioner must have been working- as a workman under any contractor and since there was no direct relationship in between the petitioner and respondent, therefore, his services were was neither engaged nor retrenched at any point of time. The specified work was allotted to the contractor and as soon as the work was completed the contract came to an end. The petitioner in his cross-examination has admitted that neither any advertisement was made nor any appointment letter was issued in his favour. He has tried to make out his case that he was paid the wages by JE of the respondent every month. He thereafter pleaded his ignorance to the query as to whether payment was made by the department or by the contractor. In case any payment was made from the Government fund to the petitioner, the respondent was required to maintain a complete record regarding the same as the public funds can not be disbursed orally without making entries



regarding the same in the cash books maintained in every public office. Had any such record been maintained by the department, the petitioner could have got the same produced before the court. The petitioner could have obtained the copy of any such document under RTI. The petitioner has stated that there were eight to ten labourers working with him namely S/Sh. Surender Pal, Raj Kumar, Mohinder Singh, etc. He has not chosen to examine any one of them before the court to corroborate his case. Thus the petitioner has failed to prove that he was engaged as a daily wage worker by the respondent and he had worked in continuity till 2012 in such a capacity. He has also failed to prove that his services were terminated by the respondent without following the process of law.

10. The petitioner has examined one Shri Harbaj as PW2 and this witness has stated that he was retired from the office of the respondent and the petitioner was known to him. He has further stated that he petitioner used to work as peon sometimes and other times, he used to carry the document/dak from one place to another place. He has stated that he had seen this person working as such in between 2006 to 2008. When he was subjected to cross-examination he could not stand by the tests and pleaded his ignorance as to where the petitioner was working for the respondent or through a contractor. He admitted that attendance register was maintained in the office. Had the petitioner worked for the respondent as a workman of the respondent he could have caused the attendance register of those years maintained by the respondent produce before the court. Sh. Harbhaj has thus also failed to support the case of the petitioner.

11. The respondent has examined Shri Rajeev Kumar Sharma, Additional, Superintending Engineer of the respondent as RW1. He has specifically stated that neither the services of the petitioner were engaged as daily wage nor he was ever terminated. He has submitted that the petitioner might have worked with some of the contractor and there was no direct connection between the workman of the contractor and the respondent. He has placed on the record lists of contractors and the extracts of the work got done through contractors as Ext.RW1/A and Ext.RW1/B. He has subjected to cross-examination on the other line regarding the violation of The Contract Labour (Regulation and Abolition) Act, 1970. He has pleaded ignorance to some of the questions. He has admitted that their department was not having any such licence. He has denied specifically that the workmen were directly engaged by the respondent. There is nothing in his cross-examination which would support the case of the petitioner.

12. Learned Authorized Representative appearing for the petitioner has argued that since the witness examined by the respondent has stated that no licence under The Contract Labour (Regulation and Abolition) Act, 1970 was obtained by the respondent therefore, the petitioner and other workmen were liable to be treated as workmen of the respondent and on this analogy the petitioner was liable for reinstatement and consequential benefits. The learned counsel for the respondent, on the other hand, has argued that this question was never raised during conciliation proceedings or in the demand notice, therefore, this question can not be examined by the court as it has not been framed in the shape of reference by the appropriate Government.

13. It is clear from the pleadings of the petitioner that he has never claimed himself to have been working under the contractor. He has not raised the demand to the effect that the contractor was only a medium to exploit the workman. He has nowhere agitated that this fact in the demand notice and such question was never examined by the appropriate Government during the conciliation proceedings. Similarly such question was never referred to this court for an answer, and therefore, the court can not make any case in favour of the petitioner merely from the admission of the witness examined by the respondent that no licence under The Contract Labour (Regulation and Abolition) Act, 1970 was obtained by the respondent department. Whether licence was obtained is no material when such question was never agitated by way of demand notice. No findings can be given by the court on this aspect. Had the petitioner pleaded specifically that he was

engaged through a contractor and there was a violation of The Contract Labour (Regulation and Abolition) Act, 1970, position would have different. The appropriate Government would have received an opportunity to examine this aspect of the matter and refer this question for an answer. For the aforesaid reasons, the arguments of the petitioner is without any merit and is liable to be rejected.

14. Taking into account the aforesaid facts and circumstances it is held that the petitioner has failed to prove that he was engaged as a workman directly by the respondent in the year 2008. The petitioner has also failed to prove that he has worked as daily wage beldar on muster roll *w.e.f.* 2008 to 2012. The petitioner has also failed to prove that his services were terminated without following the process of law. The petitioner has failed to name all those workmen who were junior to him and were retained. No list of the workmen is available before this court to examine the question of seniority and otherwise. The petitioner has failed to prove that any workman was engaged after his services were terminated by the respondent. In fact neither the engagement of the petitioner nor his termination are established, therefore the petitioner has failed to prove issue no.1. Once the issue no.1 is not established, the petitioner is not entitled for any relief and both the issues are held against the petitioner.

#### RELIEF

15. In view of my above discussions, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

16. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 26th day of November, 2022.

Sd/-  
(HANS RAJ),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala (H.P.).*

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**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT MANDI)**

Ref. No. : 111/2015

Date of Institution : 13-3-2015

Date of Decision : 26-11-2022

Shri Mukesh Kumar s/o Shri Jai Singh, r/o Village Bag, P.O. Bhararu, Tehsil Joginder Nagar, District Mandi, H.P. . *Petitioner.*

*Versus*

The Managing Director (Project), Beas Valley Power Corporation Limited Bhatha, Joginder Nagar, District Mandi, HP. . .Respondent.

**Reference under section 10 (1) of the Industrial Disputes Act, 1947**

For the petitioner : Sh. N. L. Kaundal, Ld. AR

For the respondent : Sh. Anand Sharma, Ld. Adv.

**AWARD**

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):—

**“Whether the verbal termination of services of Shri Mukesh Kumar s/o Shri Jai Singh, r/o Village Bag, P.O. Bhararu, Tehsil Joginder Nagar, District Mandi, H.P. by the Managing Director (Project), Beas Valley Power Corporation Limited, Bhatha, Tehsil Joginder Nagar, District Mandi, H.P, w.e.f. 31.12.2012 without serving any notice, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and amount of compensation the above aggrieved worker is entitled to?”**

2. The case of the petitioner as made out from the claim is that he was engaged as daily waged beldar against vacant post w.e.f. 04.5.2008 without any appointment letter by the respondent through Senior Executive Engineer and he worked in the aforesaid capacity under Assistant Engineer Shri Pardeep Mehta and Junior Engineers Sh. H.K. Thakur and Sh. Ajay Gautam. He completed 240 days in each calendar year and more than 300 workmen were engaged by the respondent at that time in the same way. His services were verbally and wrongfully terminated by the Assistant Engineer w.e.f. 31.12.2012 in violation to the provisions contained in Section 25-F of the Act. More than 100 other similarly situated workmen were also terminated and new workmen were engaged in their place under political pressure. The workmen junior to the petitioner were retained and fresh hands were engaged and thus the respondent violated the provisions contained in Sections 25-G and 25-H of the Act and the petitioner was compelled to raise the demand by way of demand notice and when the matter was not settled, the reference was made by the appropriate Government. As per the petitioner, he was not gainfully employed anywhere since the date of his illegal termination and in these facts and circumstances the respondent be directed to reinstate the petitioner and give him the benefit of seniority and continuity in service and back wages apart from paying him litigation costs.

3. The respondent has resisted and contested the claim and denied the case of the petitioner in toto. As per the respondent, the petitioner had never worked as a daily wage beldar and his services were never taken by the respondent at any point of time. Not even a single workman was engaged by the respondent on daily wage basis and the entire work was got conducted by engaging the services of private contractors on outsource basis. Neither the attendance register qua the petitioner was maintained at any point of time nor any payment was released directly to him. It is submitted that neither any fresh workman was engaged nor any other workman was retained as claimed. At the end, the respondent has submitted that claim was absolutely baseless, and therefore, it be dismissed.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 01.12.2015:—

1. Whether termination of the services of petitioner by the respondent *w.e.f.* 31-12-2012 is/was improper and unjustified as alleged? . . .*OPP.*
  2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
- Relief.

6. I have heard learned Authorized Representative for the petitioner as well as learned Counsel for the respondent at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1 : No  
 Issue No.2 : Negative  
 Relief. : Petition is **dismissed** per operative portion of the Award

#### REASONS FOR FINDINGS

##### ISSUES No.1 & 2

8. Both these issues are taken up together for the sake of convenience and to avoid the repetition of evidence.

9. Initial onus is upon the petitioner. He is supposed to prima-facie prove that he has worked on daily wage basis and in continuity *w.e.f.* May 2008 to 31.12.2012. The petitioner has sworn his own affidavit Ext.PW1/A which is replica of the claim petition. He has placed on the record the information received by him from the respondent through RTI as Ext.PW1/c. When the information Ext.PW1/B is carefully examined it is clear that some daily wages workmen were engaged through contractors by the respondent in the year 2013 and 2014. There is no document on the record to suggest that daily wagers were engaged by the respondent in between 2008-2011. The petitioner alleges that he had worked with several other similar situated workmen and they all were retrenched without following the process of law. The petitioner has not examined any of such workman who had met the same fate. In case hundreds of the workmen were aggrieved from the action of the respondent in terminating their services, anybody would have come forward to support the case of the petitioner and deposed on oath that he was also aggrieved in the similar manner and his services were also retrenched without following the process of law. No muster roll was tendered on the record and no mandays chart has been filed on the record. The petitioner has obtained the information under RTI from the respondent and the respondent has not supplied any muster or the mandays chart of the petitioner. The plea of respondent is that not even a single workman was engaged directly by the respondent but the work was got done through contractors and payment was made directly to the contractor. The respondent has placed on record list of the contractors engaged *w.e.f.* 2003 till date as Ext. RX. It is the case of the respondent that the petitioner must have been working as a workman under any contractor and since there was no

direct relationship in between the petitioner and respondent, therefore, his services were neither engaged nor retrenched at any point of time. The specified work was allotted to the contractor and as soon as the work was completed the contract came to an end. The petitioner in his cross-examination has admitted that neither any advertisement was floated nor any appointment letter was issued in his favour. He has tried to make out his case that he was paid the wages by JE of the respondent every month. He thereafter pleaded his ignorance to the query as to whether payment was made by the department or by the contractor. In case any payment was made from the Government fund to the petitioner, the respondent was required to maintain a complete record regarding the same as the public funds can not be disbursed orally without making entries regarding the same in the cash books maintained in every public office. Had any such record been maintained by the department, the petitioner could have got the same produced before the court. The petitioner could have obtained the copy of any such document under RTI.

10. The petitioner has tried to create evidence in his favour by producing photocopy of a register claiming that it is photocopy of the attendance register where he use to mark his attendance during his engagement, but has miserably failed to prove its authenticity. The petitioner during the evidence tendered the leaves of this register as Ext.PW1/B-1 to Ext.PW1/B-19. In this register one Mukesh Chaudhary s/o Sh. Jai Singh r/o Village Bhadwan (ITI holder) has been named as one of the worker and his presence has been marked for January & February 2009, May 2009, June to August 2009, October to December 2009 and for January 2010 to October 2010. In these documents, the name of the worker has been shown as Mukesh Chaudhary and somewhere Mukesh. The petitioner claims that his presence was marked on this register. These pages of a register show that none of the workers has signed the document to mark his presence but word “P” has been written to show the presence of the worker. This document is a suspicious document for many reasons and can not be believed. It is not clear either from the pleadings or from the application as to from where the petitioner has obtained this photocopy of the attendance register. The attendance register, if any, must be in the custody of the respondent and the respondent has not produced the same nor the extract of this register has been supplied under RTI. In the first page of this register one Mukesh Chaudhary s/o Sh. Jai Singh r/o Village Bhararu has been shown, whereas, the petitioner is not Mukesh Chaudhary nor his resident of Bhadwan. Moreover, the original register was never produced in the court nor any person who verified this register was examined before the court. The petitioner firstly made an attempt to summon witness later on closed the evidence without insisting that the officers, who have attested this register be summoned to prove this document. Such a document can be manufactured easily. It is very easy for any person to purchase a printed attendance register from the market and fill the same as per his own choice and convenience and thereafter obtain a photocopy of the same and destroyed the original. Photocopy is no evidence and marking the same as Exhibit does not prove anything in favour of the petitioner, when it appears a fabricated document on the face of it. Had the petitioner being marked as present by the respondent, it was for the petitioner to firstly explain as to from where this photocopy was obtained by him. It is clear from this register that several persons have been mentioned in the same and addition of some workmen has been made every month. The petitioner has not examined anyone among these persons named in the register in the court to prove that they were also working with the petitioner and their presence was also marked. The petitioner has examined one Shri Harbaj as PW2. This person claims that he was regular employee of the respondent and he knew the petitioner well as the petitioner was working as electrician and he had seen him working in the aforesaid capacity in between 2006 to 2008. When he was cross-examined, the photocopy of this register was shown to him. He admitted that there was neither his name in this register nor he has signed anywhere. He had further admitted that the register maintained in the office is a complete register and is maintained by section officer and such a register is issued by the section officer. He has admitted that there was only one attendance register at that time and all the employees use to mark their presence in that particular register. Thus the statement of this witness further strengthens the doubt regarding the genuineness of extract of register produced by the petitioner. In case, only

one register was maintained, the presence of this Harbaj Singh should have been marked on the same. Since the presence of this Harbaj has not been marked on this register, therefore, the documents are false and fabricated and can not be believed. The statement of Sh. Harbaj, has therefore, created further doubt regarding genuineness of this register. Moreover, any doubtful document can be produced by the parties and the court is not bound to believe the same unless the original is produced and proved. Even it is not clear as to when this register was opened and how many pages were there in the same. There is no certificate on this register regarding number of pages at the beginning signed by a competent person. The original register was never produced. The person who has maintained the register was never summoned and this photocopy of the register therefore, can not be relied upon despite of the fact that it has been marked as exhibit. The respondent has disputed genuineness of this register. The petitioner during his cross-examination has admitted that there is no seal of the respondent board on the register. The petitioner has volunteered to speak that it is signed by JE and SDO. No such JE and SDO was got summoned by the petitioner so that they could verify the correctness of the register and the entries made upon the same. He has admitted that the names of Murari Lal and Mohinder Singh are not mentioned in this register. Infact Murari Lal and Mohinder Singh are two other workers who have also filed similar cases against the respondent. In case, they were working with the petitioner then their names should have also been in the register. Thus this register can not be believed and it is a suspicious document and liable to be ignored.

11. The respondent has examined Shri Gaurav Sharma as RW1 who has stated on oath that the petitioner was infact a contractor and he was given tender by the department as his tender was lowest. He has specifically stated that he was never paid by the department in the capacity of workman. He was cross-examined wherein he explained that the tenders were not published as those tenders were for an amount less than two lakh. He was questioned regarding the licence of contractor-ship issued in favour of the petitioner. He has stated that the licence was issued in favour of the petitioner w.e.f. 3.7.2007 to 31.3.2021 and it was valid. He has even disclosed the licence number of petitioner as 6146 and according to him the work was awarded to the petitioner on the basis of this licence. Thus the respondent has also succeeded to prove that the petitioner was infact a contractor and he was given work on contracts.

12. Thus the petitioner has failed to prove that he was engaged as a daily wage worker by the respondent and he had worked in continuity till 2012 in such a capacity. He has also failed to prove that his services were terminated by the respondent without following the process of law. Both these issues are held in negative.

13. In view of my above discussions, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

14. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 26th day of November, 2022.

Sd/-  
(HANS RAJ),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala (H.P.)

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**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 113/2015

Date of Institution : 13-3-2015

Date of Decision : 26-11-2022

Shri Mohinder Singh s/o Shri Prem Chand, r/o V.P.O. Jalpehar, Tehsil Joginder Nagar,  
District Mandi, H.P. . *Petitioner.*

*Versus*

The Managing Director (Project), Beas Valley Power Corporation Limited Bhatha, Joginder  
Nagar, District Mandi, H.P. . *Respondent.*

**Reference under section 10 (1) of the Industrial Disputes Act, 1947**

For the petitioner : Sh. N.L. Kaundal, Ld. AR

For the respondent : Sh. Anand Sharma, Ld. Adv.

**AWARD**

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) :—

**“Whether termination of the services of Shri Mohinder Singh s/o Shri Prem Chand, r/o V.P.O Jalpehar, Tehsil Joginder Nagar, District Mandi, H.P. w.e.f. 31-12-2012 by the Managing Director (Project), Beas Valley Power Corporation Limited Bhatha, Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”**

2. The case of the petitioner as made out from the claim is that he was engaged as daily waged beldar against vacant post w.e.f. June, 2004 without any appointment letter by the respondent through Senior Executive Engineer and he worked in the aforesaid capacity in the Reservoir section under Assistant Engineer Shri R.R. Sharma and Junior Engineer Sh. Amar Singh. He completed 240 days in each calendar year and more than 300 workmen were engaged by the respondent at that time in the same way. His services were verbally and wrongfully terminated by the Assistant Engineer w.e.f. 31.12.2012 in violation to the provisions contained in Section 25-F of the Act. More than 100 other similarly situated workmen were also terminated and new workmen were engaged in their place under political pressure. The workmen junior to the petitioner were retained and fresh hands were engaged and thus the respondent violated the provisions contained in Sections 25-G and 25-H of the Act and the petitioner was compelled to raise the demand by way of demand notice and when the matter was not settled, the reference was made by the appropriate Government. As per the petitioner, he was not gainfully employed anywhere since the date of his illegal termination and in these facts and circumstances the respondent be directed to reinstate the petitioner and give him the benefit of seniority and continuity in service and back wages apart from paying him litigation costs.

3. The respondent has resisted and contested the claim and denied the case of the petitioner into. As per the respondent, the petitioner had never worked as a daily wage beldar and his services were never taken by the respondent at any point of time. Not even a single workman was engaged by the respondent on daily wage basis and the entire work was got conducted by engaging the services of private contractors on outsource basis. Neither the attendance register qua the petitioner was maintained at any point of time nor any payment was released directly to him. It is submitted that neither any fresh workman was engaged nor any other workman was retained as claimed. At the end, the respondent has submitted that claim was absolutely baseless, and therefore, it be dismissed.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 01.12.2015:—

1. Whether termination of the services of petitioner by the respondent *w.e.f.* 31-12-2012 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*

Relief.

6. I have heard learned Authorized Representative for the petitioner as well as learned Counsel for the respondent at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	: No
Issue No.2	: Negative
Relief.	: Petition is <b>dismissed</b> per operative portion of the Award

#### REASONS FOR FINDINGS

##### ISSUES No.1 & 2

8. Both these issues are taken up together for the sake of convenience and to avoid the repetition of evidence.

9. Initial onus is upon the petitioner. He is supposed to prima-facie prove that he has worked on daily wage basis and in continuity *w.e.f.* June 2004 to 31.12.2012. The petitioner has sworn his own affidavit Ext.PW1/A which is replica of the claim petition. He has placed on the record the information received by him from the respondent through RTI as Ext.PW1/B. When the information Ext.PW1/B is carefully examined it is clear that some daily wages workmen were engaged through contractors by the respondent in the year 2013 and 2014. There is no document on the record to suggest that daily wagers were engaged by the respondent in between 2004-2011. The petitioner alleges that he had worked with several other similar situated workmen and they all were retrenched without following the process of law. The petitioner has not examined any of such workman who had met the same fate. In case hundreds of the workmen were aggrieved from the



action of the respondent in terminating their services, anybody would have come forward to support the case of the petitioner and deposed on oath that he was also aggrieved in the similar manner and his services were also retrenched without following the process of law. No muster roll was tendered on the record and no mandays chart has been filed on the record. The petitioner has obtained the information under RTI from the respondent and the respondent has not supplied any muster or the mandays chart of the petitioner. The plea of respondent is that not even a single workman was engaged directly by the respondent but the work was got done through contractors and payment was made directly to the contractor. The respondent has placed on record list of the contractors engaged *w.e.f.* 2003 till date and there are as many as 51 contractors shown in this list. The petitioner is not named anywhere. In the year 2004 and 2005 several other contractors were engaged and this similar list has been placed on record. Similar is the position of 2005-2006, 2006-2007, 2007-2008, 2008-2009 and upto the year 2015-2016. The details of the works got done have also been filed on the record and it is clear that the payment of lumps sum amount was made to various contractors by the department. The respondent has tendered on record details of work executed as Ext.RW1/B and it also shows that payment has been made to various contractors and the record is running in several pages. It shows that the respondent has got entire work executed through contractors and the contractors have supplied their own labour. It is the case of the respondent that the petitioner must have been working as a workman under any contractor and since there was no direct relationship in between the petitioner and respondent, therefore, his services were neither engaged nor retrenched at any point of time. The specified work was allotted to the contractor and as soon as the work was completed the contract came to an end. The petitioner in his cross-examination has admitted that neither any advertisement was floated nor any appointment letter was issued in his favour. He has tried to make out his case that he was paid the wages by JE of the respondent every month. He thereafter pleaded his ignorance to the query as to whether payment was made by the department or by the contractor. In case any payment was made from the Government fund to the petitioner, the respondent was required to maintain a complete record regarding the same as the public funds can not be disbursed orally without making entries regarding the same in the cash books maintained in every public office. Had any such record been maintained by the department, the petitioner could have got the same produced before the court. The petitioner could have obtained the copy of any such document under RTI. The petitioner has stated that there were eight to ten labourers working with him namely S/Sh. Surender Pal, Raj Kumar, Murari Lal, Sanjay Kumar etc. He has not chosen to examine any one of them before the court to corroborate his case. Thus the petitioner has failed to prove that he was engaged as a daily wage worker by the respondent and he had worked in continuity till 2012 in such a capacity. He has also failed to prove that his services were terminated by the respondent without following the process of law.

10. The petitioner has examined one Shri Harbaj as PW2 and this witness has stated that he was retired from the office of the respondent and the petitioner was known to him. He has further stated that he petitioner used to work as peon sometimes and other times, he used to carry the document/dak from one place to another place. He has stated that he had seen this person working as such in between 2006 to 2008. When he was subjected to cross-examination he could not stand by the tests and pleaded his ignorance as to where the petitioner was working for the respondent or through a contractor. He admitted that attendance register was maintained in the office. Had the petitioner worked for the respondent as a workman of the respondent he could have caused the attendance register of those years maintained by the respondent produce before the court. Sh. Harbhaj has thus also failed to support the case of the petitioner.

11. The respondent has examined Shri Rajeev Kumar Sharma, Additional Superintending Engineer of the respondent as RW1. He has specifically stated that neither the services of the petitioner were engaged as daily wage nor he was ever terminated. He has submitted that the petitioner might have worked with some of the contractor and there was no direct connection

between the workman of the contractor and the respondent. He has placed on the record lists of contractors and the extracts of the work got done through contractors as Ext.RW1/A and Ext.RW1/B. He has subjected to cross-examination on the other line regarding the violation of The Contract Labour (Regulation and Abolition) Act, 1970. He has pleaded ignorance to some of the questions. He has admitted that their department was not having any such licence. He has denied specifically that the workmen were directly engaged by the respondent. There is nothing in his cross-examination which would support the case of the petitioner.

12. Learned Authorized Representative appearing for the petitioner has argued that since the witness examined by the respondent has stated that no licence under The Contract Labour (Regulation and Abolition) Act, 1970 was obtained by the respondent therefore, the petitioner and other workmen were liable to be treated as workmen of the respondent and on this analogy the petitioner was liable for reinstatement and consequential benefits. The learned counsel for the respondent, on the other hand, has argued that this question was never raised during conciliation proceedings or in the demand notice, therefore, this question can not be examined by the court as it has not been framed in the shape of reference by the appropriate Government.

13. It is clear from the pleadings of the petitioner that he has never claimed himself to have been working under the contractor. He has not raised the demand to the effect that the contractor was only a medium to exploit the workman. He has nowhere agitated that this fact in the demand notice and such question was never examined by the appropriate Government during the conciliation proceedings. Similarly such question was never referred to this court for an answer, and therefore, the court can not make any case in favour of the petitioner merely from the admission of the witness examined by the respondent that no licence under The Contract Labour (Regulation and Abolition) Act, 1970 was obtained by the respondent department. Whether licence was obtained is no material when such question was never agitated by way of demand notice. No findings can be given by the court on this aspect. Had the petitioner pleaded specifically that he was engaged through a contractor and there was a violation of The Contract Labour (Regulation and Abolition) Act, 1970, position would have been different. The appropriate Government would have received an opportunity to examine this aspect of the matter and refer this question for an answer. For the aforesaid reasons, the arguments of the petitioner are without any merit and are liable to be rejected.

14. Taking into account the aforesaid facts and circumstances it is held that the petitioner has failed to prove that he was engaged as a workman directly by the respondent in the year 2004. The petitioner has also failed to prove that he has worked as daily wage beldar on muster roll *w.e.f.* 2004 to 2012. The petitioner has also failed to prove that his services were terminated without following the process of law. The petitioner has failed to name all those workmen who were junior to him and were retained. No list of the workmen is available before this court to examine the question of seniority and otherwise. The petitioner has failed to prove that any workman was engaged after his services were terminated by the respondent. In fact neither the engagement of the petitioner nor his termination are established, therefore the petitioner has failed to prove issue no.1. Once the issue no.1 is not established, the petitioner is not entitled for any relief and both the issues are held against the petitioner.

#### RELIEF

15. In view of my above discussions, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

16. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 26th day of November, 2022.

Sd/-  
(HANS RAJ),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala (H.P.).*

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 333/2016  
Date of Institution : 26-5-2016  
Date of Decision : 26-11-2022

Shri Khem Singh s/o Shri Sharu Ram, r/o Village Rayal, P.O. Peej, Tehsil & District Mandi, H.P. . *Petitioner.*

*Versus*

The Senior Executive Engineer, Electrical Division, H.P.S.E.B.L. Kullu, District Kullu, H.P. . *Respondent.*

**Reference under section 10 (1) of the Industrial Disputes Act, 1947**

For the petitioner : Sh. Rajat Chaudhary, Ld. Adv.  
For the respondent : Sh. Anand Sharma, Ld. Adv.

**AWARD**

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):—

**“Whether termination of the services of Shri Khem Singh s/o Shri Sharu Ram, r/o Village Rayal, P.O. Peej, Tehsil & District Mandi, H.P. during 20-10-1989 (as alleged by the workman), by the Senior Executive Engineer, Electrical Division, H.P.S.E.B.L. Kullu, District Kullu, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute after more than 15 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period from 26-11-1986 to 26-10-1989 and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”**

2. The case of the petitioner is to the effect that his services were engaged in the year 1986 as daily waged beldar on muster roll and he worked with continuity *w.e.f.* 26.2.1986 to 26.01.1988 when his services were disengaged without following the process of law. He was further re-engaged on 28.1.1988 and worked upto 25.10.1989 with intervals and completed 240 minimum working days to get the benefit of continuous service. His services were again terminated on 26.10.1989 without following the process of law and workmen junior to him namely S/Sh. Anand Ram, Narain Singh, Kehar Singh, Roshan Lal etc. were retained. Even fresh hands were engaged and he was not called and given any opportunity to work. In July, 2014, the petitioner came to know from advertisement published in Amar Uajala and other Hindi dailies that around 700 posts of regular T-Mates were filled up and since he was old workman, he was therefore, entitled for preference over new workmen. The petitioner raised the demand and when the conciliation failed, the reference was made to this court for adjudication. On such averments, the petitioner has prayed for his reinstatement, seniority, continuity and all other benefits.

3. The respondent has resisted and contested the petition on the plea that since the record of the office was destroyed in the year 2014, therefore, nothing could be said about the status of the petitioner. It is further submitted that the petitioner has raised the matter after 24 years and thus his claim was liable to be dismissed. Rest of the averments are denied regarding number of days the petitioner claimed to have worked. It is further submitted that the petitioner had himself left the job without intimating the department and neither any junior was retained nor any fresh hand was engaged. It is prayed that the petition be dismissed.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the learned counsel for the parties and the language of the reference, following issues were framed for determination on 01.07.2019:—

1. Whether the termination of services of the petitioner by the respondent *w.e.f.* 26.10.1989 is/was illegal and unjustified, as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable, as alleged? . . .*OPR.*
4. Whether the claim petition is barred by limitation, as alleged? . . .*OPR.*
5. Whether the petitioner has not approached the Court with clean hands and has concealed true and material facts, as alleged? . . .*OPR.*
6. Whether the petitioner has no cause of action to file the case, as alleged? . . .*OPR.*

Relief.

6. I have heard learned counsel for the parties at length and considered the material on record.

7. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1 : decided accordingly

Issue No.2	: decided accordingly
Issue No.3	: No
Issue No.4	: No
Issue No.5	: No
Issue No.6	: No
Relief.	: Petition is partly allowed awarding lump sum compensation of ₹25,000/- per operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUES No.3

8. I will take up with the issue no.3 firstly for disposal. Since the petitioner has filed the claim petition in support of the reference, therefore, the petition is not maintainable, hence, this issue is held against the respondent.

#### ISSUES No.1 and 4

9. Both these issues are taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

10. The petitioner has sworn his own affidavit Ext.PW1/A in support of his case and deposed the facts in accordance with the averments made in the petition. Later on he moved an application for placing on record certain documents and the documents were proved during the cross-examination of the witness examined on behalf of the respondent. Shri Aayush Mihash, Executive Engineer of the respondent department appeared as RW1 and in his cross-examination he admitted that the petitioner had sought information under RTI and petitioner's mandays chart Ext. PA (3 pages), seniority list Ext. PB (12 pages) and the forwarding letters Ext. PC, PD and PE were of his office. He also admitted the demand notice Ext. PF. These documents can safely be considered for the purpose of this case. The demand notice Ext. PF shows that a specific ground regarding of the juniors at the time of termination of services of the petitioner was raised. Names of some juniors namely S/Sh. Anand Ram, Narain Singh, Kehar Singh, Roshan Lal etc. have been given therein. It is also stated some fresh hands were engaged after his termination. Thus the petitioner has highlighted the violation of Section 25-G as well as 25-H of the Act in the demand notice itself. The mandays chart Ext. PA running into three sheets shows that the petitioner had joined the department as daily waged on 26.2.1986 and worked till 25.10.1989 but with lots of breaks in between. The petitioner has neither raised demand nor any reference was made by the appropriate Government regarding time to time breaks and therefore, this court can not consider the question of fictional breaks. The court, therefore, can not condone the breaks and bridge the gaps as there is no reference to this effect from the appropriate government. Since the services of the petitioner are said to have been disengaged on 25.10.1989, therefore, the court has to count the period of twelve calendar months upto 25.11.1988 in reverse order and find out whether the petitioner has completed the work of 240 days to bring his case within the scope of continuous services for the purpose of section 25 F of the Act. It is clear from the mandays chart that petitioner has worked for 21 days in between 26.11.1988 to 26.12.1988 and has not worked at all for the rest of the month of November 1988. In other words, the petitioner has worked only for 4 days in the month of November 1988. In between 26.12.1988 to 25.1.1989 he had worked for 80 days and in between 26.1.1989 to 26.1.1989 another 31 days. He has worked from 26.2.1989 to 31.3.1989 for 34 days and he did not work in the month of April. In the month of May the petitioner has worked *w.e.f.* 25.5.1989 to 25.6.1989 for 20 days and from 26.6.1989 to 25.7.1989 for 23 days, 26.8.1989 to 25.9.1989 for 31 days and 26.9.1989 to 25.10.1989 for 21 days when all these days are added

together even then the total working days comes less than 240 days. When this is so, the petitioner has therefore, failed to bring his case within the purview of Section 25-F of the Act. Since there is no reference to examine the time to time breaks therefore, the court can not consider the period of absence for any purpose. Once the petitioner has worked for less than 240 days in the preceding 12 calendar months before his termination the provisions of Section 25-F of the Act is not attracted at all.

11. The petitioner has specifically alleged in the notice as well as in the claim that workmen junior to him have been retained whereas, his services were terminated. The respondent, on the other hand, has come up with the plea that the petitioner has himself left the work. The petitioner was subjected to cross-examination on this aspect and he has made damaging admissions. He has admitted that he has himself left the work in the year 1989. He further admitted that thereafter he did not visit the respondent to ask for the work. The question that arises for consideration is whether such admission is equivalent to abandonment or not. It goes without saying that Industrial Disputes Act is a beneficial piece of legislation and it has come into existence to protect illiterate labour class who are subjected to exploitation by the mighty employers. Taking into account the beneficial nature of legislation, it has been held by the superior courts time and again that the plea of abandonment is not to be inferred lightly but once the plea of abandonment is taken by the employer, he invites upon him the onus to prove that when the workman has left the work, every effort was made to call him back and he was at least apprised of the rights that would accrue to him with the passage of time. In case, the petitioner had himself absented from the work, the respondent was not discharged of the duties imposed by the law upon it. The respondent should have issued letter to the petitioner asking him to join the work or exhibit his intentions clearly in writing. This was important as workmen junior to the petitioner were still working. The petitioner had a right already accrued in his favour by virtue of the fact that workmen junior to him were working with the respondent. This fact is clear from the seniority list tendered on the record as Ext. PB. Since the petitioner had joined the work on 26.6.1986 and was working with breaks till 26.9.1989 therefore, those workmen who have joined after 26.9.1986 were junior to him. This seniority list Ext. PB shows that the workers engaged after serial no. 207 of the seniority list were junior to him and workmen were engaged even upto 14.7.1986 by the respondent. Thus there were several workmen junior to the petitioner and, in case, the petitioner had absented himself from the work, it was for the respondent to call him back and apprise him of the valuable right that had already accrued in his favour after workmen junior to him were engaged. He had the important right of 'first come last go' in his favour and his services could be terminated after his juniors were retrenched. Once such right has already accrued in favour of the petitioner, it was for the respondent to at least call him once after he had absented and apprise him of this valuable right and let him decide as to whether he wanted to continue with the work or not. In case he refused to work only then plea of abandonment could be taken and established against him and that too after a document was prepared to this effect by responsible officer, who was in-charge of the work. Such document could be produced before the court in the litigation to establish that the respondent has performed its part towards the establishment of the plea of the abandonment. Thus there is violation of Section 25-G of the Act despite of the fact that the petitioner has left the work and thereafter not asked the department for providing him work. The plea of abandonment requires much more and it can not be established lightly. Thus for the aforesaid reasons, the respondent has failed to prove for the plea of abandonment.

12. So far as the plea regarding the engagement of fresh workmen is concerned, no names of those workmen have been given and no seniority list has been filed, and therefore, the violation of Section 25-H is not established though the petitioner has been successful to prove the violation of Section 25-G of the Act.

13. It is clear from the demand notice Ext. PE that the petitioner has raised the demand in the year 2014. No explanation has come forth for such an inordinate delay and the claim is though

not time barred but the petitioner cannot get relief of reinstatement. Infact there is no limitation for approaching the court in such like cases but the emphasis has been made on the molding of the relief by taking into account the delay caused by the petitioner in approaching the court. In this case, the petitioner has certainly approached the court after more than 25 years and therefore, he is not entitled for reinstatement despite of the fact that violation of Section 25-G is established. Taking into account the fact that a valuable right of the petitioner was infringed, he is held entitled to receive the compensation of ₹25,000/- as full and final payment.

## ISSUE No. 2

14. In view of the above discussion the petitioner is held entitled for compensation to the tune of ₹25,000/- (Rupees seventy five thousand only), hence this issue is decided accordingly.  
ISSUES No.5 and 6

15. There is nothing on the record to prove that the petitioner has approached the court not with clean hands. Nothing has been concealed from this court and the petitioner has the cause of action in his favour to file the present case, hence these issues are also held in favour of the petitioner.

## RELIEF

16. In view of my discussion on the above issues, it is held that though there had been violation of Section 25-G of the Act in this case and the petitioner had raised demand after a gap of more than 25 years and his claim for reinstatement has thus been vitiated by delay and laches, hence reinstatement and other consequential benefits cannot be granted in his favour but he is held entitled for compensation to the tune of ₹25,000/- (Rupees twenty five thousand only), which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

17. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 26th day of November, 2022.

Sd/-  
(HANS RAJ),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala (H.P.).*

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## BEFORE THE NATIONAL LOK ADALAT HELD AT DHARAMSHALA

[Organized by Labour Court-cum-Industrial Tribunal, Dharamshala under section 19 of the Legal Services Authorities Act, 1987 (Central Act)]

Applicant : Smt. Kamla Devi d/o Late Smt. Ram Kali, r/o Village Bhadaru,  
P.O. Karsog, Tehsil Karsog, District Mandi, H.P.

Respondent(s) : The Divisional Forest Officer, Karsog Forest Division, Karsog, District Mandi, H.P.

**Number of proceedings of the Labour Court-cum-Industrial Tribunal,  
Dharamshala : 80/2020**

*Present:-*

Applicant : Sh. Rajat Chaudhary, Ld. Adv. Vice

Respondent : Sh. Anil Sharma, Ld. Dy. D.A.

**AWARD**

The dispute between the parties having been referred for determination to the National Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

The statement of learned counsel Shri Pradeep Parmar has already been recorded on 16.11.2022 on behalf of the petitioner. In view of the statement no further action is required in this case as the matter is said to have been pending before the Hon'ble High Court of Himachal Pradesh. Hence, the reference is disposed of accordingly.

The parties are informed that the Court fee, if any, paid by any of them shall be refunded.

Member  
(B. S. PATHANIA)

Judicial Officer  
(HANS RAJ)

Announced:  
Date: 27-11-2022

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**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT CHAMBA)**

Ref. No. : 280/2015  
Date of Institution : 13-07-2015  
Date of Decision : 29-11-2022

Shri Hem Raj s/o Shri Sumeru, r/o Village Kawa, P.O. Killar, Tehsil Pangi,  
District Chamba, H.P. . .Petitioner.

*Versus*

The Executive Engineer Killar Division, H.P.P.W.D, Killar, District Chamba, H.P.  
. .Respondent.



**Reference under section 10 (1) of the Industrial Disputes Act, 1947**

For the petitioner : Sh. O.P. Bhardwaj, Ld. Adv.

For the respondent : Sh. Anil Sharma, Ld. Dy. D.A.

**AWARD**

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) :—

**“Whether the industrial dispute raised by the worker Shri Hem Raj s/o Shri Sumeru, r/o Village Kawas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated nil received on 31.10.2011 regarding his alleged illegal termination of service during September 2002 suffers from delay and latches? If not, Whether termination of the services of Shri Hem Raj s/o Shri Sumeru, r/o Village Kawas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. during September, 2002 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”**

2. After receipt of the above reference, a corrigendum reference dated 29th August, 2017 has also been received from the appropriate Government which is given below:

**“Whereas, a reference has been made to the Ld. Labour Court-cum-Industrial Tribunal, Dharamshala, District Kangra, H.P. vide notification of even no. dated 04-07-2015 for its legal adjudication. However, inadvertently the correct facts could not be mentioned in the date of termination of the said notification. Therefore, the same may be read as “August, 2004” instead of “September, 2002”.**

3. The petitioner has pleaded in his claim that he belongs to Tehsil Pangi, District Chamba, a remote area declared as schedule tribe and it remains cut off for almost for six months from the rest of Country. Single line administration system runs in this area and a daily wager has to work for 160 days in a calendar year to avail the benefit of Section 25-B of the Act. The services of the petitioner were engaged in year 1998 without any appointment letter and she worked with intermittent breaks till October 2004 and his services were orally terminated by the respondent without following the process of law despite of the fact that the work and funds were very much available. The petitioner contends that he has no source of income and is not gainfully employed anywhere. The respondent has retained the juniors named in para no.10 of the petition while disengaging the services of the petitioner and fresh workmen were also engaged without giving an opportunity to him to return and join the work. The petitioner initially made oral requests to the respondent department but nothing favourable took place. He raised his demand by way of demand notice dated 31.10.2011 in which conciliation proceedings took place but no amicable settlement could be had, and the present reference was made by the appropriate government. On the aforesaid averments, the petitioner has prayed for her reinstatement with all the consequential benefits.

4. The respondent has resisted and contested the petition and explained that the petitioner was engaged as daily wage beldar in the year 1998 and he worked intermittently till the year 2002

and thereafter left the job at his own. No fictional breaks were given to him and he was rather herself casual in attending the work and for this reason he never completed the work of 160 days in any of the calendar year. The petitioner is said to have raised the dispute after almost nine years and he was not entitled for any relief. It is denied that any junior was retained and fresh hands were also engaged by the department as alleged by him. It is submitted that the petitioner was not entitled for any relief and his claim was frustrated by the long delay in raising the demand.

5. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply. He has specifically named Shri Bhameshwar Dutt who was engaged in the year 1995 and his services were regularized by the respondent department later on.

6. From the pleadings of the parties and language of the reference, following issues were framed for determination on 27.11.2015:-

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated nil qua his termination of service during September, 2002 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . . *OPP*.
2. Whether termination of the services of petitioner by the respondent during September, 2002 is/was illegal and unjustified as alleged? . . . *OPP*.
3. If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . . *OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . . . *OPR*.

Relief.

7. It may be stated here that initially issues were framed on 27.11.2015 but later on it was realized that the mandays chart of the petitioner suggested that he has worked upto the year 2004, and therefore, corrigendum was applied by the petitioner and it was received on 5.10.2017 whereafter issues were re-casted and re-framed and the issues dated 12.10.2017 read as under:—

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated nil qua his termination of service during August, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . . *OPP*.
2. Whether termination of the services of petitioner by the respondent during August, 2004 is/was illegal and unjustified as alleged? . . . *OPP*.
3. If issue no. 1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? . . . *OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . . . *OPR*.

Relief.

8. I have heard learned Counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

9. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	: decided accordingly
Issue No.2	: decided accordingly
Issue No.3	: decided accordingly
Issue No.4	: No
Relief.	: Petition is <b>partly allowed</b> awarding lump sum compensation of ₹1,50,000/- per operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUES No.1 to 4

10. All these issues are taken up together for sake of convenience and to avoid repetition of facts and evidence.

11. The parties have tendered on record several documents and careful perusal of those document shows that the respondent department has been very casual in preparing the mandays chart with respect to the petitioner. The mandays chart tendered on record Ext.RW1/B shows that the petitioner has worked till the year 2002 and he had worked only for two months viz. July and August for 28+31=59 days. In the year 2001 he has worked for 172 days with lots of breaks. The petitioner has placed on record the mandays chart supplied to him by the respondent department, which is Ext.PW1/H. This mandays chart is similar to the mandays chart Ext.RW1/B. The petitioner has placed on record another mandays chart issued by department itself showing that the petitioner has worked for 158 days in the year 2002. This mandays chart is Ext.PW1/I. Another mandays chart was supplied to the petitioner by the respondent which is signed by as many as two officers. It was obtained by the petitioner under RTI. This mandays chart is Ext.PW1/J which shows that the petitioner has worked for 141 days in the year 2003 and 86 days in the year 2004. It is on the basis of this mandays chart that the petitioner applied for corrigendum and the corrigendum was accordingly received from the appropriate Government. The conduct of the respondent department is very strange from very beginning. It has come up with the case that the petitioner has worked upto the year 2002 and thereafter left the work to not to join again. The mandays chart on this line was issued to the petitioner and similar mandays chart was tendered on record by the respondent. When mandays chart was supplied under RTI then petitioner is shown to have worked in the year 2003 and 2004 as well. Thus it is very much clear that the officers of the respondent department have been very casual and they have issued mandays chart in a very casual manner. In case the petitioner has worked upto the year 2004 then why mandays chart till the year 2002 was relied upon. It is again not clear as to why variation have been coming in the days mentioned in the mandays charts. No material has been brought on the record to explain these variation. Position whatever may be, now the court has to rely upon the mandays chart Ext.PW1/J which shows that the petitioner has worked upto the year 2004 with the respondent. Moreover, the corrigendum to the reference also seeks the adjudication with respect to the termination of the services of the petitioner in the year 2004.

12. While relying upon this mandays chart for 2004 it is clear that the petitioner has worked only for three months *i.e.* June to August for 27+31+28=86 days in the year 2004. He has worked in September and October 2003 for 29+15=44 days. Since the petitioner has been terminated in August 2004, therefore, the court has to count the working days till September 2003 so as to make 12 calendar months in reverse order from the month of termination. Thus 86+44 comes to 130 days and period of 130 days is less from 160 days, and therefore, even if the services of the petitioner were terminated in August 2004 even then there was no requirement of serving notice under Section 25-F, as the case of the petitioner is not covered under Section 25-F of the Act.

13. The petitioner has led evidence twice in this case. He has sworn his affidavit in Hindi before corrigendum was received and was subjected to cross-examination thereupon. When the corrigendum was received, the petitioner sworn another affidavit Ext.PW1/A-1 in English he was again subjected to cross-examination in the same way. The respondent examined Engineer Shri Bal Krishan Kapil initially as RW1 and after the corrigendum Engineer Shri Vishal Chopra as RW2. The affidavits of both these witnesses are Ext.RW1/A and Ext.RW2/A, and both these witnesses have been subjected to cross-examination as well. In the affidavits sworn by the petitioner, he has submitted that he was given fictional breaks intentionally so that he could not complete 160 days in a calendar year preceding his termination. It may be stated here that there is no reference to condone his time to time termination, and therefore, the court can not adjudicate the question whether the breaks in the past were given to the petitioner with a view to prevent him from completing 160 working days in the calendar year. The period of breaks can not be condoned by this court, for the reasons that no reference has received by this court to this effect. The court has to stick to the reference received from the appropriate Government while adjudicating the same. Thus it is not made out from the statement of petitioner that he has able to explain the reasons for not completing the work of 160 days in the preceding 12 calendar months of his termination. Thus for the aforesaid reasons, the violation of Section 25-F is not established at all.

14. The petitioner has come up with the plea that the workmen junior to him were retained and fresh hands were also engaged by the respondent without giving him an opportunity to return to his work. The petitioner has named as many as five persons in para no.10 of the petition viz. S/Shri Suraj Ram, Mohan Lal, Chunku Ram, Budhi Ram and Dev Raj having been engaged *w.e.f.* 1997 to 2004. The respondent has pleaded that these workmen were infact re-engaged in compliance to the orders of the court and list has been prepared to this effect and filed on the record Ext.RW1/C. It has been signed by the Engineer, who has not come forward to depose about this fact in the witness box. Infact, the respondent was supposed to file on the record the details of the cases in which such orders were passed by the court. Even it is not clear as to when these persons were disengaged. Thus the respondent has not come with clean hands before the court and merely a list said to have been signed by the Executive Engineer not sufficient to prove the stand of the respondent. This court cannot lose sight of the fact that the respondent has been submitting incorrect mandays chart with the seal of responsible officer. As already observed hereinabove, the respondent has initially issued the mandays chart in which the petitioner is shown to have worked in the department upto the year 2002 and later on new mandays chart was issued by the same respondent showing that the petitioner has worked till the year 2004. When the officers of the respondent can go such an extent in manipulating the document, therefore, the court is not prepared to buy their story to the effect that the workmen claimed by the petitioner as his juniors were reengaged on the orders of the court unless the awards or the correspondence with respect to these workmen is not placed on the record. This list does not show as to when the orders of the court was passed to reinstate these workmen. The conduct of the respondent officers in manipulating different and incorrect mandays charts as already discussed hereinabove has made this court to infer that the respondents can manipulate any incorrect document and, unless copies of the awards are placed on the record, the plea of the respondent is not worthy of acceptance. The Industrial disputes Act being beneficial piece of legislation, the court has to presume the fact in favour of the workmen rather than the employer. In the absence of any document on the record to show as to in which case/reference number these persons were ordered to be re-engaged by the court, this list can not accept and it is proved that some juniors to the petitioner were retained by the respondent while terminating the services of the petitioner and such a conduct on their part is instance of sheer violation of Section 25-G of the Act.

15. When the petitioner led the evidence after the corrigendum he has added two more names Sarita Devi and Shri Dev Raj in the list who are said to have been engaged in the years 2013 and 2007. This fact was also stated by the petitioner on oath and he was subjected to cross-

examination. It has been put to him in his cross-examination that he has not mentioned these two names in the claim but these names were mentioned in the affidavit for the first time. The petitioner has admitted this suggestion. This is not sufficient to discredit the petitioner. It is not necessary that the petitioner should name every junior workman to him in the claim petition. It is a matter of evidence and the petitioner is not supposed to plead the evidence. Once he has stated about these facts on oath, it was the duty of the respondent to have cross-examined the petitioner on this aspect. In case complete information was not available with the respondent at the time of cross-examination of the petitioner, the file could have been adjourned for the next date so that record could be consulted with respect to these two workmen. Since no such exercise was undertaken on behalf of the respondent, therefore, there is no reason to disbelieve the petitioner. Once the petitioner has said that two more persons were re-engaged in the year 2007 and 2013 therefore, it is established that there is violation of Section 25-H of the Act as the petitioner was not recalled before engaging these two persons. The respondent had ample opportunity to meet the case of the petitioner while leading the evidence on its turn. Shri Vishal Chopra, Executive Engineer, has appeared as RW2 after this evidence and he is silent about these two names in his affidavit Ext.RW2/A. Once it has come to the notice of the respondent that the petitioner has spoken on oath that the respondent has engaged two more workmen in the year 2007 and 2013, it was the duty of Engineer Shri Vishal Chopra, to consult the record and after completely verifying the facts, swear an affidavit to explain the position. He has not stated anything in affidavit about these two persons. It was the duty of Shri Vishal Chopra to depose and explain as to under which circumstances these two persons were engaged, in case they were found to have been engaged. Since he is silent on this aspect therefore, an adverse inference is liable to be drawn against the respondent for concealing the relevant information from the court. Thus in the aforesaid such reasons it is established that juniors were retained at the time of termination of the petitioner and after his services were terminated fresh hands were engaged without calling him back to work.

16. The respondent has come up with the plea that the services of the petitioner were never retrenched but he left the work at his own but no evidence has been led to establish the plea of abandonment. No notice was issued to the petitioner while he was absenting himself from the work. No explanation was called for. There is no material on the record that to prove that the matter of the absence of the petitioner was taken up by the Executive Engineer on administration side and after giving him an opportunity, he recorded a satisfaction to the effect that the petitioner was not willing to the work despite of being called time and again. Had any such exercise been made by him and such document prepared by him would have become material to prove the plea of abandonment as raised by the respondent. Since no such document has been placed on the record, therefore, the plea of abandonment is not established. It is also settled that once the plea of respondent regarding abandonment fails, the ultimate presumption goes that the services of the petitioner were terminated. In this case, the petitioner has not only pleaded but has also spoken on oath that his services were terminated without following the process of law. Thus the violation of Sections 25-G and 25-H of the Act is established in this case.

17. Although it is proved on the record that the respondent has violated the provisions of Sections 25-G and 25-H of the Act, the court has to examine the delay part in the case as there is specific reference to this effect. The services of the petitioner are proved to have been terminated in the year 2004 and the demand was raised in the year 2011 for the first time and after seven years. There is no explanation by the petitioner which could be treated as credible for such delay. His affidavit is silent regarding the delay occasioned except for deposing that he is a poor and illiterate man. It may be stated here that illiteracy is not the ground which can be taken to justify the delay of seven years in this case. Once the services of the petitioner were terminated, he could have raised the issue within two or three years. The petitioner cannot sit idle for seven years and wake up only thereafter. The delay is gross and not reasonable. It is settled law by now that a workman sleeps over his right and does not approach the authorities/courts at the earliest he certainly is not

entitled to the relief of reinstatement and court is well within its powers to mold the relief into grant of compensation.

18. In the case in hand since the petitioner has raised the demand after more than seven years therefore, he is not entitled for the relief of reinstatement. Taking into account the number of years passed in between and the number of the years for which he has worked, it will be appropriate and just that the petitioner is held entitled to receive compensation to the tune of ₹1,50,000/- in lieu of his reinstatement and other consequential benefits. In view of the above discussion the claim petition is held to maintainable as it has been filed in support of the reference received from the appropriate Government. All these issues are decided accordingly.

#### RELIEF

19. In view of my discussion on the above issues, it is held that though there had been violation of Sections 25-G and 25-H of the Act in this case but the petitioner had raised demand after a gap of more than 07 years and his claim for reinstatement has therefore, been vitiated by delay and laches, hence, the reinstatement and other consequential benefits can not be granted in his favour but he is held entitled for compensation to the tune of ₹1,50,000/- (Rupees One Lakh Fifty thousand only), which would be paid within four months by the respondent from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

20. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 29th day of November, 2022.

Sd/-  
(HANS RAJ),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala (H.P.).*  
*(Camp at Chamba)*

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**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT CHAMBA)**

Ref. No. : 436/2016  
Date of Institution : 19-8-2016  
Date of Decision : 29-11-2022

Miss Prem Dei d/o Shri Man Chand, r/o Village Hugal, P.O. Karyas, Tehsil Pangi,  
District Chamba, H.P. . . . . .*Petitioner.*

*Versus*

. .Respondent.

**Reference under section 10 (1) of the Industrial Disputes Act, 1947**

For the petitioner : Sh. Rajeev Dharmani, Ld. Adv.

For the respondent : Sh. Anil Sharma, Ld. Dy. D.A.

**AWARD**

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) :—

**“Whether alleged termination of services of Miss Prem Dei d/o Shri Man Chand, r/o Village Hugal, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. during year, 2004 by the Executive Engineer, H.P.P.W.D. Killar Division, (Pangi) District Chamba H.P., without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified; whereas she has raised the industrial dispute vide demand notice dated nil received in the Labour Office Chamba on 09/07/2013 after lapse of more than 9 years. If not, keeping in view delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”**

2. The petitioner has pleaded in her claim that she belongs to Tehsil Pangi, District Chamba, a remote area declared as schedule tribe and it remains cut off for almost for six months from the rest of Country. Single line administration system runs in this area and a daily wager has to work for 160 days in a calendar year to avail the benefit of Section 25-B of the Act. The services of the petitioner were engaged in year 1992 without any appointment letter and she worked with intermittent breaks till October 2004 and her services were orally terminated by the respondent without following the process of law despite of the fact that the work and funds were very much available. The petitioner contends that she has no source of income and is not gainfully employed anywhere. The respondent had retained the juniors named in para no.10 of the petition while disengaging the services of the petitioner and fresh workmen were also engaged without giving an opportunity to the petitioner to return and join the work. The petitioner initially made oral requests to the respondent department but nothing favourable took place. She raised her demand by way of demand notice dated 25.4.2015 in which conciliation took place and present reference was made by the appropriate government. On the aforesaid averments, the petitioner has prayed for her reinstatement with all the consequential benefits.

3. The respondent has resisted and contested the petition and explained that the petitioner was engaged as daily wage beldar in the year 1994 and she worked intermittently till the year 1999 and thereafter left the job at her own. No fictional breaks were given to her and she was rather herself casual in attending the work and for this reason she never completed the work of 160 days in any of the calendar year. The petitioner is said to have raised the dispute after almost fourteen years and she was not entitled for any relief. It is denied that no junior was retained and no fresh hand was engaged by the department as alleged by her, hence the petitioner was not entitled for any relief as her claim was frustrated by the long delay in raising the demand.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply. She has specifically named few workmen who were engaged after her termination.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 05.9.2019:—

1. Whether termination of the services of the petitioner by the respondent in the year 2004 is illegal and unjustified?
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*
3. Whether the claim petition is not maintainable, as alleged? . .*OPR.*
4. Whether the claim petition is bad on the ground of delay and laches, as alleged? . .*OPR.*

Relief.

6. I have heard learned Counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

7. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	: decided accordingly
Issue No.2	: decided accordingly
Issue No.3	: No
Issue No.4	: Yes
Relief.	: Petition is <b>partly allowed</b> awarding lump sum compensation of ₹75,000/- per operative portion of the Award.

#### REASONS FOR FINDINGS

##### ISSUES No.1 and 4

8. Both these issues are taken up together for sake of convenience and to avoid repetition of facts and evidence.

9. The petitioner alleges that she was engaged in the year 1992 and disengaged in the year 2004, whereas, the respondent has placed on record her mandays chart showing that she was engaged for the first time in April, 1994 and she worked till August 1999. Thus as per the respondent the petitioner has not worked in the manner she has claimed. The onus was upon the petitioner to prove her claim. She has sworn her affidavit Ext.PW1/A which is nothing but replica of the petition and no other witness has been examined by her in support of her case. The self serving statement of the petitioner is not sufficient to establish that she was firstly engaged in the year 1992 and she worked till the year 2004. No family member, no respectable villager and no other workman, who had ever worked with the petitioner has been examined by her to prove that she has worked *w.e.f.* 1992 till the year 2004. On the other hand, the respondent has placed on the record mandays chart having been prepared from the muster rolls and there is no reason to



disbelieve this document. The petitioner has not brought any material on the record to show that an incorrect mandays chart was prepared by the respondent and produced in the court. Thus the petitioner has failed to prove that she was engaged in the year 1992 and disengaged in the year 2004. Rather, it is proved from the mandays chart Ext.RW1/B that the petitioner was engaged in April, 1994 and she worked till August 1999.

10. The next question that arises for consideration is whether the claim of the petitioner is liable to be dismissed on this sole ground or there is a need to proceed further. It is argued by the learned Dy. District Attorney for the respondent that court can not go beyond the scope of reference and since the reference speaks of the termination of the petitioner in the year 2004 therefore, the court is bound to dismiss the claim as the petitioner is proved to have worked till the year 1999. On the other hand, the learned counsel appearing for the petitioner has argued that since the services of the petitioner has been terminated, therefore, it is not material as to when her services were terminated.

11. A similar question dealt by the Hon'ble High Court of H.P. in **Sansar Chand vs. State of Himachal Pradesh** reported in **2018 LAB. I.C. (NOC) 145 (H.P.)**. It was held that once the Labour Court/Industrial Tribunal receives a Reference from the Appropriate Government under Industrial Disputes Act, the court is bound to adjudicate the same and can not hold the same as not maintainable. In this case this court has dismissed the claim as not maintainable for the simple reason that the petitioner was not terminated from her services in the year she had claimed in the demand notice and the claim petition but her termination as took place thereafter. It was held by this court that since the petitioner was very much in service on the date when her termination is alleged in the reference, therefore, the reference was liable to be answered in negative as the court can not travel beyond the scope of the reference. The petitioner felt aggrieved and carried the matter to Hon'ble High Court in a writ petition. The Hon'ble High Court while allowing the writ petition was pleased to observe that it was not material on record as when the services of the petitioner was disengaged. It was further held that only fact material was that the petitioner was out of service when the demand was raised and reference was filed. After making such observations the Hon'ble Court allowed writ petition and remanded the matter back with the directions to dispose of the reference/claim on merits and not on such technical ground.

12. In the case in hand it is thus not material whether the petitioner has worked upto year 1999 or to the year 2004 as on the date of notice she was already out of job and presently also she has not been re-engaged. The court can therefore, travel outside scope of reference to this extent and decide the reference in accordance with the proved facts. Thus the arguments of the learned Dy. District Attorney that this court can not travel beyond the language of the reference is not sustainable.

13. Since it has been established from the material discussed hereinabove that the petitioner has worked till August 1999, therefore the court has to consider further whether any provisions of the Act was violated or not. The petitioner has alleged that her services were terminated, whereas, the respondent has claimed that the petitioner left the work at her own. The first and foremost question this court has to examine is whether there is violation of Section 25-F of the Act or not. When the number of days are counted from August 1999 to September 1998 in reverse order for preceding 12 calendar months it becomes clear that the petitioner has worked for 173 days. It is an admitted fact that since Pangri is remote and hard area and therefore, the Government of Himachal Pradesh has made number of working days necessary as 160 instead of 240 in a calendar. There is no dispute to this effect. Since the petitioner has worked for more than 160 days in the preceding 12 calendar months of her termination, therefore, there was a requirement of notice under Section 25-F of the Act, in case, her services were to be terminated by the respondent.

14. In the case in hand, since the respondent has taken the plea that the petitioner has left the work at her sweet will and her services were never terminated, therefore, the onus is upon the respondent to establish this plea. The respondent has not led any cogent and convincing evidence to establish the plea of abandonment. No notice was issued to the petitioner in case she was absenting herself from the work. No explanation was called for. There is no material on the record that to prove that the matter of the absence of the petitioner was taken up by the Executive Engineer on administration side and giving an opportunity to the petitioner he recorded a satisfaction to the effect that the petitioner was not willing to the work despite of being called time and again. Had any such exercise been made by him and such document prepared by him would have become material to prove the plea of abandonment as raised by the respondent. Since no such document has been placed on the record, therefore, the plea of abandonment is not established. It is also settled that once the plea of respondent regarding abandonment fails, the ultimate presumption goes that the services of the petitioner were terminated. In this case, the petitioner has not only pleaded but has also spoken on oath that her services were terminated without following the process of law. In such a situation a plea of abandonment fails and it is held that the services of the petitioner were terminated without following the conditions mentioned in Section 25-F of the Act.

15. The petitioner has come up with the plea that workmen junior to her were retained and there is violation of Section 25-G of the Act. The petitioner has sworn her affidavit to this effect and she has therefore, spoken on oath on this plea. It was for the respondent to disprove this plea by leading cogent evidence. After all the respondent was custodian of the record and could have placed on record any document to disprove the plea of the petitioner. Since the petitioner was engaged in the year 1994 it can not be presumed by this court that no other workman was engaged on daily wage basis after the year 1994. It was for the respondent to maintain the seniority list and the same could have been placed on the record to show that petitioner was the last worker ever engaged on daily wage basis and after the year 1994 no other worker was engaged on daily wage basis. Since no such document has been produced on the record therefore, the presumption goes that other workmen were also engaged on daily wage basis after the petitioner. Since the petitioner has stated that those workmen were still working and were not disengaged at the time of her termination therefore, there is violation of Section 25-G of the Act in this case.

16. Similarly the petitioner has named some of fresh workmen who were engaged after her termination. The onus was upon the respondent to prove that no new workman was engaged after August 1999 by the department on daily wage basis. No seniority list has been placed on record by the respondent and therefore, the respondent being the custodian of the records has failed to discharge the onus placed upon it. Since the Industrial Disputes Act is a piece of beneficial legislation meant to protect and watch the interest of the workmen who are either illiterate or semi literate and are also represented by authorized representative, who are not well-versed with the legal complications and procedure, the court has to act in a liberal manner while examining the pleadings and evidence by the worker class. Since the employer is custodian of the records and upto date record has to be maintained in the government department it is for the respondent to place on record the document prepared at the relevant time so that court could examine the same. The respondent has not filed on the record any affidavit of the officer of the department to show that no fresh hand was engaged as daily wage labourer in the department after the year 1999. When this is so, it can not be said that no fresh hand was engaged by the respondent after 1999. In this case no document except the mandays chart of the petitioner has been placed on record, and therefore, the presumptions are liable to be drawn in favour of the petitioner. It is, therefore, held that the respondent has failed to establish that no fresh hand was engaged after the termination of the services of the petitioner in the year 1999.

17. Although the petitioner has been able to establish that there were violation of Sections 25-F, 25-G and 25-H of the Act yet she has raised demand after a long period of 14 years and there

is no explanation on her part for not raising demand at earliest. The law is well settled that the workman can not be permitted to sleep over his rights for years together and then approached the authorities/courts for his reinstatement and such reinstatement discourages all those workmen who are working for years together. It is settled law that a workman who sleeps over his right for years together can not claim reinstatement but the relief can be molded by the court and compensation instead of reinstatement can be granted by taking into account all the relevant facts and circumstances.

18. In the case in hand since the petitioner has raised the demand after more than 14 years therefore, she is not entitled for the relief of reinstatement. Taking into account the number of years passed in between, it will be appropriate and just that the petitioner is held entitled to receive compensation to the tune of ₹75,000/- in lieu of her reinstatement and other consequential benefits. Issue no.1 is decided accordingly.

#### ISSUE No. 2

19. In view of the above discussion the petitioner is held entitled for compensation to the tune of ₹75,000/- (Rupees seventy five thousand only), hence this issue is decided accordingly.

#### ISSUE No. 3

20. In view of the above discussion the claim petition is held to maintainable as it has been filed in support of the reference received from the appropriate Government.

#### RELIEF

21. In view of my discussion on the above issues, it is held that though there had been violation of Sections 25-F, 25-G and 25-H of the Act in this case but the petitioner had raised demand after a gap of more than 14 years and her claim for reinstatement has therefore, been vitiated by delay and laches, hence, the reinstatement and other consequential benefits can not be granted in her favour but she is held entitled for compensation to the tune of ₹75,000/- (Rupees seventy five thousand only), which would be paid within four months by the respondent from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

22. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 29th day of November, 2022.

Sd/-  
(HANS RAJ),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala (H.P.).  
(Camp at Chamba).

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT CHAMBA)**

Ref. No. : 274/2016

Date of Institution : 04-5-2016

Date of Decision : 29-11-2022

Shri Jai Ram s/o Shri Ram Dayal, r/o Village Bairagarh, P.O. Bairagarh, Tehsil Churah,  
District Chamba, H.P. . . . *Petitioner* .

*Versus*

The Executive Engineer, Killar Division, H.P.P.W.D, Killar, District Chamba, H.P.  
.. . . *Respondent* .

**Reference under section 10 (1) of the Industrial Disputes Act, 1947**

For the petitioner : Sh. Dharam Malhotra, Ld. Adv.

For the respondent : Sh. Anil Sharma, Ld. Dy. D.A.

**AWARD**

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) :—

**“Whether alleged termination of services of Shri Jai Ram s/o Shri Ram Dayal r/o Village Bairagarh, P.O. Bairagarh, Tehsil Churah, District Chamba H.P. during September, 2006 by the Executive Engineer, Killar Division, H.P.P.W.D., Tehsil Killar, District Chamba, H.P., who has worked as beldar on daily wages basis and has raised his industrial dispute *vide* demand notice dated 09/03/2012 after more than 6 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 53 days, 34 days, 60 days and 92 days during the years 2002, 2003, 2004 and 2006 respectively and delay of more than 6 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?”**

2. The case of the petitioner as made out from the claim is that he was engaged as beldar *w.e.f.* June 2001 by the respondent in HPPWD Sub Division Shore, Division HPPWD Killar (Pangi) and he worked in continuity in the aforesaid capacity till November 2006. Neither any notice was served upon him nor a written order was issued to retrench him. He made several requests to the respondent to re-engage him but he was put off one or another excuse and respondent no.1 finally refused to re-engage him in February 2012, hence, he had to raise demand and the conciliation failed and the present reference was made to this court for an answer. As per the petitioner, the respondents have retained junior workmen to the petitioner and have also engaged fresh hands without giving the petitioner an opportunity of being heard. On such averments, the petitioner has prayed for his reinstatement and all other consequential benefits.

3. The respondents have resisted and contested the petition on the ground of maintainability and delay and laches. On merits, the respondent has come up with the case that the petitioner was engaged in the year 2002 and remained in work till 2004 and thereafter left the job at his sweet will. He had not completed 160 days in any of calendar year and neither any junior was retained nor any fresh hands was engaged, hence, the petitioner was not entitled to any relief. Moreover, the petitioner has approached the court after eight years without any explanation.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply. He even named some of the workmen who were engaged later in time without asking him to return to the work.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 05.10.2018:-

1. Whether termination of service of petitioner by the respondent during September, 2006 is/was illegal and unjustified as alleged? . . .*OPP*.
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form? . . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged? . . .*OPR*.

Relief.

6. I have heard learned Counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

7. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	: decided accordingly
Issue No.2	: decided accordingly
Issue No.3	: No
Issue No.4	: Yes
Relief.	: Petition is <b>partly allowed</b> awarding lump sum compensation of ₹75,000/- per operative portion of the Award.

#### REASONS FOR FINDINGS

##### ISSUES No.1 to 4

8. All these issues are taken up together for sake of convenience and to avoid repetition of facts and evidence.

9. The reference received by this court show the date of year of termination as 2006, whereas, the respondent has come up with the plea that petitioner had left the work in the year 2004 after working for 31 days only. This fact is also recorded in the mandays chart Ext.RW1/B. Thus

there is a variation in between the terms of reference and the case of the respondent. When the terms of reference are carefully gone through, even the number of working days has been given in the same as 53, 34, 60 and 92 days in the years 2002, 2003, 2004 and 2006. Before a reference is received by the court, there is conciliation process in which both the parties participate and submit their documents and put forth their case. The description of the number of working days in the reference by the appropriate Government is not to be taken lightly as such mention is made from the mandays chart produced before the Conciliation Officer by the department. Otherwise the Conciliation Officer will not mentioned number of days in the reference out of his imagination. The reference was never assailed by the respondent before the Hon'ble High Court by way of writ petition on the ground that the date of disengagement of the petitioner was wrongly recorded as 2006, whereas, he has worked only upto 2004. By not assailing the reference, the respondents has accepted its terms, and therefore, any evidence led to the contrary by the respondents can not be looked into by the court as parties can not travel beyond the scope of reference. If any party feels aggrieved by the terms and the language of the reference, it can assail the reference by way of writ petition. If such exercise is not undertaken in that event, the terms and conditions of reference are accepted by the parties. The court, is therefore, bound to answer the reference. Thus producing a mandays chart showing that the petitioner has worked in between 2002 to 2004 is therefore, not permissible and the respondent can not come up with a new case before this court which is against the terms of reference.

10. When the petitioner was examined as PW1, he has tendered his affidavit Ext.PW1/A on the record. When subjected to cross-examination he made an admission to the effect that he has worked as daily wager in between 2002 to 2004. This admission is also crucial and it can not be ignored lightly. This admission corroborates the case of the respondent. Still the question remains before this court regarding the terms of reference. The reference speaks of termination of the services of the petitioner in the year 2006 but petitioner by his own admission states that he remained as a daily wager till the year 2004. In these facts and circumstances the admission of the petitioner has to be attached more importance by the court. In the year 2004 the petitioner has not worked for more than 160 days in 12 calendar months preceding his termination and the provisions of Section 25-F of the Act is not attracted. Even if the terms of the reference are treated as proved fact even then there is a gap of full year of 2005 in between 2004 and 2006 and in the year 2006 the petitioner is shown to have worked for 92 days. Thus again the petitioner is not proved to have worked for minimum 160 days in twelve months preceding his termination. Thus whether the terms of reference are taken as base to decide the reference or the defence of the respondent is taken as the basis, the position remains that the petitioner has not worked for 160 days in twelve calendar months preceding his termination. The provisions of Section 25-F is surely not attracted in this case.

11. The petitioner has specifically alleged in his petition that junior workmen to him have been retained and fresh hands were engaged after his termination without giving him an opportunity to return. The petitioner was engaged in the year 2002 as per the mandays chart and the respondent has not placed on record the seniority list of 2003 and 2004 to show that there was no addition in the same. The seniority list was the best document which the respondent could have brought to notice of this court showing that the petitioner was last in the list and no other person was engaged after the petitioner. The respondent certainly has not come to the court with clean hands and has withheld the best material available with it. Similarly the respondent has not placed on records the seniority list for the years 2005, 2006, 2007 etc. to show that no fresh hands was engaged in the year 2006, 2007 and thereafter. The respondent has thus again withheld material document from this court. Had any such seniority list been filed on the record the court could have examined the same and find out whether any fresh hands was engaged after the petitioner or not. The petitioner in his affidavit has specifically named some of the juniors who were retained and has said that later on fresh hands were engaged after his termination. He has specifically named some of the workmen in his rejoinder having been engaged after his termination. He has made a

reference of two workmen Shri Amro and Shri Chatro in para no.3 of his affidavit sworn in the evidence. There is no cross-examination on this aspect, and moreover, no seniority list has been placed on the record by the respondents showing the actual position, and therefore, this court can not believe the plea of the respondents when it is contend that neither any junior was retained nor any fresh hands was engaged. It may be stated here that the Industrial Disputes Act is a beneficial piece of legislation and it is meant to protect illiterate and semi illiterate workmen against the exploitation at the end of employers who have the resources and who indulge in unfair labour practices. In the case in hand, since the employer is Government department therefore, it is presumed that every action is documented in the records so that same could be justified later on and a complete record of the same could be maintained. Every engagement is done through legal process after proper documentation and seniority lists are prepared every year. Thus seniority lists are the best pieces of evidence to disprove the case of the petitioner so far as violation of Section 25-G and Section 25-H are concerned. The respondents can not take risk of withholding those documents, and in case, such risk is taken then the respondents can not succeed in discharge the onus placed upon them. In the case in hand, since the petitioner has been consistently claiming that juniors have been retained and later on fresh hands were engaged, the petitioner has succeeded in discharging the prima-facie onus and it was for the respondent to prove the contrary but no such evidence had been led. Being the beneficial piece of legislation, the court has to presume the facts in favour of the workman and while drawing such presumption it can safely be said that the respondent has retained the juniors and engaged fresh hands after the termination of the services of the petitioner, and therefore, violation of Sections 25-G and 25-H is attracted in this case.

12. It may stated here that the respondent has although taken up the plea of abandonment of job by the petitioner but has failed to discharge the onus. No evidence has been led on this aspect. No document has been placed on the record which could be claimed as a notice or explanation of the petitioner when he had abandoned the work. No document was prepared by any officer of the respondents department in satisfaction of the fact that the petitioner had not abandoned the work and had no intentions to return. When nothing has been done by the respondents to make out the case of abandonment against the petitioner, abandonment is not proved. As aforesaid the workmen are treated as illiterate and ignorant of their legal rights and once a daily wager has been engaged then his services can not be terminated without following the process of law. In case any junior to the petitioner is working the petitioner leaves the work, the employer has to make efforts to call him back as junior to him is already working. In case effort fails and the worker exhibits his intention to not to return only then employer is discharged of the responsibility. In this case, for the aforesaid reasons the respondents has failed to prove abandonment on the part of the petitioner and it is therefore, proved that the services of the petitioner were termination by the respondent.

13. It is clear from the file that there is delay in approaching the authorities by the petitioner. The petitioner has come up with the vague explanation to the effect that he visited the office of the respondent time and again but he was put off on one or other pretext until 2012. Such explanation is not a sufficient. The petitioner could have come forth with better explanation or he would have approach the authorities at the earliest. Once the services of the petitioner was terminated in the year 2004 approaching the authorities after eight years has proved fatal in the way of his reinstatement. The law is well settled that the workman can not be permitted to sleep over his rights for years together and then approach the authorities/courts for his reinstatement as such reinstatement discourages all those workmen who are working for years together. It is settled law that a workman who sleeps over his right for years together can not claim reinstatement but the relief can be molded by the court and compensation instead of reinstatement can be granted by taking into account all the relevant facts and circumstances.

14. In the case in hand since the petitioner has raised the demand after more than 8 years therefore, he is not entitled for the relief of reinstatement. Taking into account the number of years

passed in between, it will be appropriate and just that the petitioner is held entitled to receive compensation to the tune of ₹75,000/- in lieu of him reinstatement and other consequential benefits. Claim petition is held maintainable as it has been filed in support of the reference received from the appropriate Government, hence all the issues are decided accordingly.

#### RELIEF

15. In view of my discussion on the above issues, it is held that though there had been violation of Sections 25-G and 25-H of the Act in this case but the petitioner had raised demand after a gap of more than 08 years and his claim for reinstatement has therefore, been vitiated by delay and latches, hence, the reinstatement and other consequential benefits can not be granted in his favour but he is held entitled for compensation to the tune of ₹75,000/- (Rupees seventy five thousand only), which would be paid within four months by the respondents from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

16. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 29th day of November, 2022.

Sd/-  
(HANS RAJ),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala (H.P.).*  
*(Camp at Chamba).*

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**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT CHAMBA)**

Ref. No. : 174/2016  
Date of Institution : 17-3-2016  
Date of Decision : 29-11-2022

Shri Amar Chand s/o Shri Ram Nath, r/o Village Tatan, P.O. Karyas, Tehsil Pangti,  
District Chamba, H.P. . . . . . *Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D, Division Killar, Tehsil Pangti, District Chamba, H.P.  
. . . . . *Respondent.*

**Reference under section 10 (1) of the Industrial Disputes Act, 1947**

For the petitioner : Sh. I.S. Jaryal, Ld. AR



For the respondent : Sh. Anil Sharma, Ld. Dy. D.A.

### AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) :—

**“Whether alleged termination of services of Sh. Amar Chand s/o Sh. Ram Nath r/o Village Tatan, P/O Karyas, Tehsil Pangi, District Chamba, H.P. from 2004, by the Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi District Chamba, H.P. who had worked as beldar on daily wages basis only for 59 days, 166.5 days, 139 days, 68 days, 175 days, 135 days, 116 days, 82 days, 150 days, 72 days and 50 days during the year 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003 and 2004 and had raised his industrial dispute *vide* demand notice dated 31/8/2012, after delay of more than 7 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period as mentioned above and delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”**

2. The case of the petitioner, in brief, is to the effect that he was engaged as a daily waged beldar on muster basis in the year 1994 and worked with intermittent breaks till 2004 when his services were terminated orally for no reasons despite of the fact that he had worked for more than 160 days in each calendar year as area of Pangi is tribal area in which a workman is supposed to work for 160 days in place of 240 days to claim the benefit of continuous service. The respondent did not follow the principle of 'last come first go' and workmen junior to him shown in para no.4 of the petition were retained and fresh hands were also engaged after his termination, who have also been shown in para no.4. The petitioner was given fictional breaks intentionally so that he could not complete 160 days and could be deprived of benefits accruing to him by virtue of law. The petitioner raised the demand and conciliation took place where after reference was made to this court for adjudication in accordance with law.

3. The respondent has resisted and contested the petition on the plea that the petitioner left the job at his sweet will and no fictional breaks were given to him. It is further submitted that the petitioner has not completed 160 days work at any point of time and neither junior to him were retained nor fresh hands were engaged. It is explained that the workmen shown in para no.4 from serial no.1 to 24, 26 and 28 have been re-engaged as per the directions of the court and workmen shown at serial no.25 and 27 have been engaged in harness cases. The respondent has prayed for dismissal of the petition as it has been filed after a long delay, and moreover, the petitioner had not worked for requisite number of days in order to invoke the provisions contained in Section 25-F of the Act.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 06.3.2020:-

1. Whether the petitioner was illegally and unjustifiably terminated by the respondent in year 2004, as alleged. If so, its effect? . . .*OPP.*
2. Whether the claim petition is not maintainable, as alleged? . . .*OPR.*

3. Whether the claim petition is bad on account of delay and laches, as alleged? . . . *OPR*.

Relief.

6. I have heard learned Authorized Representative for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

7. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1 : decided accordingly

Issue No.2 : No

Issue No.3 : Yes

Relief. : Petition is **partly allowed** awarding lump sum compensation of ₹1,50,000/- per operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUES No.1 and 3

8. All these issues are taken up together for sake of convenience and to avoid repetition of facts and evidence.

9. The petitioner has appeared as PW1 in the witness box and filed his affidavit Ext.PW1/A which is detailed and every fact mentioned in the claim has been replicated in the same. The petitioner has tendered his mandays chart Ext.PW1/B, lists of those daily wagers who have been regularized with the passage of time as Ext.PW1/C and Ext.PW1/D. He has tendered on record year-wise mandays char of such workers Ext. PW1/E, seniority of Shri Sucheta Ram, Shri Shyam Lal etc. Ext.PW1/F to Ext.PW1/L. When he was subjected to cross-examination he denied that he has left the work at his own and has not completed the required work of 160 days. The respondent, on the other hand, has examined Shri Vishal Chopra, Executive Engineer as RW1. He has tendered his affidavit Ext.RW1/A. He was subjected to cross-examination wherein he stated that no seniority list was maintained by them in respect of the daily wagers and the seniority list with respect to the regular employee was only maintained. He has admitted that no notice was served upon the petitioner. He has admitted that they have not recalled the petitioner and no notice was ever issued to the petitioner. Careful perusal of the mandays chart of the petitioner Ext. RW1/B proves that the petitioner has worked for 50 days in the year 2004 and 72 days in the year 2003. In case, the service of the petitioner were terminated even then the provisions of Section 25-F is not attracted in this case as he has not worked for minimum 160 days in the preceding 12 calendar months before his termination. It may be stated here that the reference is not with respect to time to time termination, and therefore, this court can not bridge the gap in between though the petitioner has been shown to have worked from the year 1994 onwards. Thus the violation of Section 25-F is not made out on the face of the document i.e. mandays chart.

10. To prove the fact that junior workmen were retained at the time of termination of the petitioner and fresh hands were joined without giving the petitioner an opportunity, the petitioner has tendered on record certain documents which are material for the purpose of this case. Ext.PW1/B is mandays chart of Smt. Chin Dei and Smt. Bhag Dei etc. and they have been engaged in the year 2000 and worked till the year 2009. They are certainly junior to the petitioner. The

petitioner has tendered on record another mandays chart Ext.PW1/C in respect to Shri Dev and Shri Guatam who were engaged in the year 2007 and have been regularized with the passage of time. Ext.PW1/D is another list of workmen who were engaged in the year 1995, 1996, 1997 etc. it is clear from this document that last two workmen have been shown involved in court cases, whereas, the rests have nothing to do with the court cases. Ext. PW1/E is another list of as many as fourteen workmen and there are several workmen who have joined the work after the joining of the petitioner and they have also been regularized with the passage of time. Ext.PW1/F is mandays of Shri Sucheta Ram and this Sucheta Ram was engaged in the year 1998 and remained in continuous service. Shri Shyam Lal was engaged in June 1998 as is clear from his Ext.PW1/G, Shri Hari Ram was also engaged in the year 1998 and Shri Tek Chand was engaged in the year 1997. Their mandays charts are Ext.PW1/G and Ext.PW1/I. Number of days of Shri Chunku have been shown in Ext.PW1/J and that of Shri Mohan Lal Ext.PW1/K and Shri Suraj Ram Ext.PW1/L. The respondent has although come with the plea that these workmen shown in para no. 4 of the claim petition have been engaged by the order of the court but award passed by the court have been placed on record to prove this fact. No order passed by the office to comply with the directions of the court has been filed on the record by the respondent, and therefore, it is not clear as to whether they were actually engaged after the orders of the courts or it is only a false plea taken to avoid the liability. Since the Industrial Disputes Act is a piece of beneficial legislation meant to protect and watch the interest of the workmen who are either illiterate or semi literate and are also represented by authorized representative, who are not well-versed with the legal complications and procedure, the court has to act in a liberal manner while examining the pleadings and evidence led by the worker class. Since the employer is custodian of the records and upto date record has to be maintained in the government department it is for the respondent to place on record the document prepared at the relevant time so that court could examine the same. The respondent has not filed on the record any affidavit of the officer of the department to show that no fresh hand was engaged as daily wage labourer in the department after the year 2004. When this is so, it can not be said that no fresh hand was engaged by the respondent after 2004. It is, therefore, held that the respondent has failed to establish that no fresh hand was engaged after the termination of the services of the petitioner in the year 2004. It was the duty of the respondent to have placed on record every material to show that all these workmen who are junior to the petitioner have been engaged by the orders of the courts and not otherwise. Even if they have been engaged by the orders of the court even then the respondent cannot escape the liability and such re-engagement has to be treated as re-engagement of junior workmen to the petitioner. Moreover, it is not clear from the reply and evidence led by the respondent as to when these workmen were terminated. It was for the respondent to have placed on record complete material to show that they were terminated prior to the petitioner. Since no such evidence has been placed on record therefore, it can not be said that these persons were engaged by the orders of the courts. It is therefore, proved that the workmen junior to the petitioner were engaged and they were permitted to work, whereas, the services of the petitioner were terminated.

11. Although the petitioner has been able to establish that there were violation of Sections 25-G and 25-H of the Act yet he has raised demand after a long period of 07 years and there is no explanation on his part for not raising demand at earliest. The law is well settled that the workman can not be permitted to sleep over his rights for years together and then approached the authorities/courts for his reinstatement and such reinstatement discourages all those workmen who are working for years together. It is settled law that a workman who sleeps over his right for years together can not claim reinstatement but the relief can be molded by the court and compensation instead of reinstatement can be granted by taking into account all the relevant facts and circumstances.

12. In the case in hand since the petitioner has raised the demand after more than 07 years therefore, he is not entitled for the relief of reinstatement. Taking into account the number of years

passed in between and other relevant factors, it will be appropriate and just that the petitioner is held entitled to receive compensation to the tune of ₹1,50,000/- in lieu of his reinstatement and other consequential benefits. In view of the above discussion, the claim petition is held to maintainable as it has been filed in support of the reference received from the appropriate Government, hence all the issues are decided accordingly.

#### RELIEF

13. In view of my discussion on the above issues, it is held that though there had been violation of Sections 25-G and 25-H of the Act in this case but the petitioner had raised demand after a gap of more than 07 years and his claim for reinstatement has therefore, been vitiated by delay and laches, hence, the reinstatement and other consequential benefits can not be granted in his favour but he is held entitled for compensation to the tune of ₹1,50,000/- (Rupees One lakh fifty thousand only), which would be paid within four months by the respondent from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

14. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 29th day of November, 2022.

Sd/-  
(HANS RAJ),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala (H.P.).*  
*(Camp at Chamba)*

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**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT CHAMBA)**

Ref. No. : 276/2016

Date of Institution : 04-5-2016

Date of Decision : 29-11-2022

Miss Kamla Devi d/o Shri Chuni Lal, r/o Village Praghwal, P.O. Karyas, Tehsil Pangi,  
District Chamba, H.P. . .Petitioner.

*Versus*

The Executive Engineer, Killar Division, H.P.P.W.D. Killar, District Chamba, H.P.  
. .Respondent.

**Reference under section 10 (1) of the Industrial Disputes Act, 1947**

For the petitioner : Sh. O.P. Bhardwaj, Ld. Adv.  
 For the respondent : Sh. Anil Sharma, Ld. Dy. D.A.

### AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) :—

**“Whether alleged termination of services of Miss Kamla Devi d/o Shri Chumi Lal, Village Pragheral, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. during year, 2004 by the Executive Engineer, H.P.P.W.D. Killar Division, (Pangi) District Chamba H.P., without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified; whereas she has raised the industrial dispute *vide* demand notice dated nil received in the Labour Office Chamba on 09/07/2013 after lapse of more than 9 years. If not, keeping in view delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”**

2. The petitioner has pleaded in her claim that she belongs to Tehsil Pangi, District Chamba, a remote area declared as schedule tribe and it remains cut off for almost for six months from the rest of Country. Single line administration system runs in this area and a daily wager has to work for 160 days in a calendar year to avail the benefit of Section 25-B of the Act. The services of the petitioner were engaged in year 1989 without any appointment letter and she worked with intermittent breaks till October 2004 and her services were orally terminated by the respondent without following the process of law despite of the fact that the work and funds were very much available. The petitioner contends that she has no source of income and is not gainfully employed anywhere. The respondent is said to have retained the juniors named in para no.10 of the petition while disengaging the services of the petitioner and fresh workmen are also said to have been engaged without giving an opportunity to the petitioner to return and join the work. The petitioner initially made oral requests to the respondent department but nothing favourable took place. She raised her demand by way of demand notice dated 23.12.2011 in which conciliation took place and present reference was made by the appropriate government. On the aforesaid averments, the petitioner has prayed for her reinstatement with all the consequential benefits.

3. The respondent has resisted and contested the petition and explained that the petitioner was engaged as daily wage beldar in the year 1992 and she worked intermittently till the year 1997 and thereafter left the job at her own. No fictional breaks were given to her and she was rather herself casual in attending the work and for this reason she never completed the work of 160 days in any of the calendar year. The petitioner is said to have raised the dispute after almost thirteen years and she was, therefore, not entitled for any relief. It is submitted that no junior was retained and no fresh hand was engaged by the department as alleged by her, hence, the petitioner was not entitled for any relief as her claim was frustrated by the long delay in raising the demand.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply. She has specifically named few workmen who were engaged after her termination.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 07.11.2019:—

1. Whether termination of the services of the petitioner by the respondent during year 1997 is illegal and unjustified?
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable, as alleged? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches, as alleged? . . .*OPR.*

Relief.

6. I have heard learned Counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

7. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1 : decided accordingly

Issue No.2 : decided accordingly

Issue No.3 : No

Issue No.4 : Yes

Relief. : Petition is **partly allowed** awarding lump sum compensation of ₹75,000/- per operative portion of the Award.

#### REASONS FOR FINDINGS

##### ISSUES No.1 and 4

8. Both these issues are taken up together for sake of convenience and to avoid repetition of facts and evidence.

9. The petitioner alleges that she was engaged in the year 1992 and disengaged in the year 2004, whereas, the respondent has placed on record her mandays chart showing that she was engaged for the first time in June 1992 and she worked till July, 1997. Thus as per the respondent the petitioner has not worked in the manner she has claimed. The onus was upon the petitioner to prove her claim. She has sworn her affidavit Ext.PW1/A which is nothing but replica of the petition and no other witness has been examined by her in support of her case. The self serving statement of the petitioner is not sufficient to establish that she was firstly engaged in the year 1989 and she worked till the year 2004. No family member, no respectable villager and no other workman, who had ever worked with the petitioner has been examined by her to prove that she has worked w.e.f. 1989 till the year 2004. On the other hand, the respondent has placed on the record mandays chart having been prepared from the muster rolls and there is no reason to disbelieve this document. The petitioner has not brought any material on the record to show that an incorrect mandays chart was prepared by the respondent and produced in the court. Thus the petitioner has failed to prove that she was engaged in the year 1989 and disengaged in the year 2004. Rather, it is proved from the mandays chart Ext.RW1/B that the petitioner was engaged in June, 1992 and she worked till July, 1997.

10. The next question that arises for consideration is whether the claim of the petitioner is liable to be dismissed on this sole ground or there is a need to proceed further. It is argued by the

learned Dy. District Attorney for the respondent that court can not go beyond the scope of reference and since the reference speaks of the termination of the petitioner in the year 2004 therefore, the court is bound to dismiss the claim as the petitioner is proved to have worked till the year 1997. On the other hand, the learned counsel appearing for the petitioner has argued that since the services of the petitioner has been terminated, therefore, it is not material as to when her services were terminated.

11. A similar question dealt by the Hon'ble High Court of H.P. in **Sansar Chand vs. State of Himachal Pradesh** reported in **2018 LAB. I.C. (NOC) 145 (H.P.)**. It was held that once the Labour Court/Industrial Tribunal receives a Reference from the Appropriate Government under Industrial Disputes Act, the court is bound to adjudicate the same and can not hold the same as not maintainable. In this case this court has dismissed the claim as not maintainable for the simple reason that the petitioner was not terminated from her services in the year she had claimed in the demand notice and the claim petition but her termination as took place thereafter. It was held by this court that since the petitioner was very much in service on the date when her termination is alleged in the reference, therefore, the reference was liable to be answered in negative as the court can not travel beyond the scope of the reference. The petitioner felt aggrieved and carried the matter to Hon'ble High Court in a writ petition. The Hon'ble High Court while allowing the writ petition was pleased to observe that it was not material on record as when the services of the petitioner was disengaged. It was further held that only fact material was that the petitioner was out of service when the demand was raised and reference was filed. After making such observations the Hon'ble Court allowed writ petition and remanded the matter back with the directions to dispose of the reference/claim on merits and not on such technical ground.

12. In the case in hand it is thus not material whether the petitioner has worked upto year 1997 or to the year 2004 as on the date of notice she was already out of job and presently also she has not been re-engaged. The court can therefore, travel outside scope of reference to this extent and decide the reference in accordance with the proved facts. Thus the arguments of the learned Dy. District Attorney that this court can not travel beyond the language of the reference is not sustainable.

13. Since it has been established from the material discussed hereinabove that the petitioner has worked till July 1997, therefore the court has to consider further whether any provisions of the Act was violated or not. The petitioner has alleged that her services were terminated, whereas, the respondent has claimed that the petitioner left the work at her own. The first and foremost question this court has to examine is whether there is violation of Section 25-F of the Act or not? When the number of days are counted from July 1997 to August 1996 in reverse order for preceding 12 calendar months it becomes clear that the petitioner has worked for 187 days. It is an admitted fact that since Pangri is remote and hard area and therefore, the Government of Himachal Pradesh has made number of working days necessary as 160 instead of 240 in a calendar. There is no dispute to this effect. Since the petitioner has worked for more than 160 days in the preceding 12 calendar months of her termination, therefore, there was a requirement of notice under Section 25-F of the Act, in case, her services were to be terminated by the respondent.

14. In the case in hand, since the respondent has taken the plea that the petitioner has left the work at her sweet will and her services were never terminated, therefore, the onus is upon the respondent to establish this plea. The respondent has not led any cogent and convincing evidence to establish the plea of abandonment. No notice was issued to the petitioner in case she was absenting herself from the work. No explanation was called for. There is no material on the record that to prove that the matter of the absence of the petitioner was taken up by the Executive Engineer on administration side and giving an opportunity to the petitioner he recorded a satisfaction to the effect that the petitioner was not willing to the work despite of being called time and again. Had

any such exercise been made by him and such document prepared by him would have become material to prove the plea of abandonment as raised by the respondent. Since no such document has been placed on the record, therefore, the plea of abandonment is not established. It is also settled that once the plea of respondent regarding abandonment fails, the ultimate presumption goes that the services of the petitioner were terminated. In this case, the petitioner has not only pleaded but has also spoken on oath that her services were terminated without following the process of law. In such a situation a plea of abandonment fails and it is held that the services of the petitioner were terminated without following the conditions mentioned in Section 25-F of the Act.

15. The petitioner has come up with the plea that workmen junior to her were retained and there is violation of Section 25-G of the Act. The petitioner has sworn her affidavit to this effect and she has therefore, spoken on oath on this plea. It was for the respondent to disprove this plea by leading cogent evidence. After all the respondent was custodian of the record and could have placed on record any document to disprove the plea of the petitioner. Since the petitioner was engaged in the year 1992 it can not be presumed by this court that no other workman was engaged on daily wage basis after the year 1994. It was for the respondent to maintain the seniority list and the same could have been placed on the record to show that petitioner was the last worker ever engaged on daily wage basis and after the year 1992 no other worker was engaged on daily wage basis. Since no such document has been produced on the record therefore, the presumption goes that other workmen were also engaged on daily wage basis after the petitioner. Since the petitioner has stated that those workmen were still working and were not disengaged at the time of her termination therefore, there is violation of Section 25-G of the Act in this case.

16. Similarly the petitioner has named some of fresh workmen who were engaged after her termination. The petitioner has tendered on the record list of workers as Ext. PW1/C. The onus was upon the respondent to prove that no new workman was engaged after July 1997 by the department on daily wage basis. No seniority list has been placed on record by the respondent and therefore, the respondent being the custodian of the records has failed to discharge the onus placed upon it. Since the Industrial Disputes Act is a piece of beneficial legislation meant to protect and watch the interest of the workmen who are either illiterate or semi literate and are also represented by authorized representative, who are not well-versed with the legal complications and procedure, the court has to act in a liberal manner while examining the pleadings and evidence by the worker class. Since the employer is custodian of the records and upto date record has to be maintained in the government department it is for the respondent to place on record the document prepared at the relevant time so that court could examine the same. The respondent has not filed on the record any affidavit of the officer of the department to show that no fresh hand was engaged as daily wage labourer in the department after the year 1997. When this is so, it can not be said that no fresh hand was engaged by the respondent after 1997. In this case no document except the mandays chart of the petitioner has been placed on record, and therefore, the presumptions are liable to be drawn in favour of the petitioner. It is, therefore, held that the respondent has failed to establish that no fresh hand was engaged after the termination of the services of the petitioner in the year 1999.

17. Although the petitioner has been able to establish that there was violation of Sections 25-F, 25-G and 25-H of the Act yet she has raised demand after a long period of 13 years and there is no explanation on her part for not raising demand at earliest. The law is well settled that the workman can not be permitted to sleep over his rights for years together and then approach the authorities/courts for his reinstatement and such reinstatement discourages all those workmen who are working for years together. It is settled law that a workman who sleeps over his right for years together can not claim reinstatement but the relief can be molded by the court and compensation instead of reinstatement can be granted by taking into account all the relevant facts and circumstances.

18. In the case in hand since the petitioner has raised the demand after more than 13 years therefore, she is not entitled for the relief of reinstatement. Taking into account the number of



years passed in between, it will be appropriate and just that the petitioner is held entitled to receive compensation to the tune of ₹75,000/- in lieu of her reinstatement and other consequential benefits. Issue no.1 is decided accordingly.

ISSUE No. 2

19. In view of the above discussion the petitioner is held entitled for compensation to the tune of ₹75,000/- (Rupees seventy five thousand only), hence this issue is decided accordingly.

ISSUE No. 3

20. In view of the above discussion the claim petition is held to maintainable as it has been filed in support of the reference received from the appropriate Government.

#### RELIEF

21. In view of my discussion on the above issues, it is held that though there had been violation of Sections 25-F, 25-G and 25-H of the Act in this case but the petitioner had raised demand after a gap of more than 13 years and her claim for reinstatement has therefore, been vitiated by delay and laches, hence, the reinstatement and other consequential benefits can not be granted in her favour but she is held entitled for compensation to the tune of ₹75,000/- (Rupees seventy five thousand only), which would be paid within four months by the respondent from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

22. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 29th day of November, 2022.

Sd/-  
(HANS RAJ),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala (H.P.).*  
*(Camp at Chamba)*

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT CHAMBA)**

Ref. No. : 72/2017  
Date of Institution : 23-02-2017  
Date of Decision : 29-11-2022

Smt. Sato Devi d/o Shri Suram Chand, r/o Village Sural, P.O. Tai Sural & w/o Sh. Roshan Lal, r/o Village Kawas, Tehsil Pangi, District Chamba, H.P. . .Petitioner.

*Versus*

The Executive Engineer, H.P.P.W.D. Division Pangi at Killar, District Chamba, H.P.

*..Respondent.*

**Reference under section 10 (1) of the Industrial Disputes Act, 1947**

For the petitioner : Sh. O.P. Bhardwaj, Ld. Adv.

For the respondent : Sh. Anil Sharma, Ld. Dy. D.A.

**AWARD**

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) :—

**“Whether alleged termination of services of Smt. Sato Devi d/o Sh. Suram Chand Village Sural P.O. Tai Sural & w/o Sh. Roshan Lal Village Kawas Tehsil Pangi Distt. Chamba H.P. during 2003 by the Executive Engineer, HPPWD Division, Pangi at Killar Tehsil Pangi District Chamba, H.P. who had worked as beldar on daily wages basis only for 984 days during the year 1992, and thereafter during the year 1994 to 2003 and has raised her industrial dispute vide demand notice dated nil received in the office of the Labour Officer Chamba on 16/11/2015 after more than 11 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as mentioned above and delay of more 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”**

2. The petitioner has pleaded in her claim that she belongs to Tehsil Pangi, District Chamba, a remote area declared as schedule tribe and it remains cut off for almost for six months from the rest of Country. Single line administration system runs in this area and a daily wager has to work for 160 days in a calendar year to avail the benefit of Section 25-B of the Act. The services of the petitioner were engaged in year 1994 without any appointment letter and she worked with intermittent breaks till 2003 and her services were orally terminated by the respondent without following the process of law despite of the fact that the work and funds were very much available. The petitioner contends that she has no source of income and is not gainfully employed anywhere. The respondent had retained the juniors named in para no.10 of the petition while disengaging the services of the petitioner and fresh workmen were also engaged without giving an opportunity to the petitioner to return and join the work. The petitioner initially made oral requests to the respondent department but nothing favourable took place. She raised her demand by way of demand notice dated 04.02.2012 in which conciliation took place and present reference was made by the appropriate government. On the aforesaid averments, the petitioner has prayed for her reinstatement with all the consequential benefits.

3. The respondent has resisted and contested the petition and explained that the petitioner was engaged as daily wage beldar in the year 1992 and she worked intermittently till the year 2003 and thereafter left the job at her own. No fictional breaks were given to her and she was rather herself casual in attending the work and for this reason she never completed the work of 160 days in any of the calendar year. The petitioner is said to have raised the dispute after almost eleven years and she was not entitled for any relief. It is denied that no junior was retained and no fresh

hand was engaged by the department as alleged by her, hence the petitioner was not entitled for any relief as her claim was frustrated by the long delay in raising the demand.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply. She has specifically named few workmen who were engaged after her termination.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 12.12.2018:—

1. Whether termination of the services of the petitioner by the respondent during year, 2003 is/was illegal and unjustified as alleged?

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.

3. Whether the claim petition is not maintainable in the present form, as alleged? . . .*OPR*.

4. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged? . . .*OPR*.

Relief.

6. I have heard learned Counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:-

Issue No.1 : decided accordingly

Issue No.2 : decided accordingly

Issue No.3 : No

Issue No.4 : Yes

Relief. : Petition is **partly allowed** awarding lump sum compensation of ₹75,000/- per operative portion of the Award.

#### REASONS FOR FINDINGS

##### ISSUES No.1 and 4

8. Both these issues are taken up together for sake of convenience and to avoid repetition of facts and evidence.

9. The mandays chart of the petitioner has been tendered on the record as Ext.RW1/B. This document is not in dispute. The petitioner has worked for 103 days in the year 2003 and for 95 days in the year 2002. When 12 months are counted in reverse order from October 2003, the same ends in November 2002. The petitioner has not worked even for a single day in the month of November and December, 2002, therefore, the work done in the year 2002 can not be counted for any purpose. The court therefore, can take into account the work done by the petitioner in the year 2003 and the number of working days come to 103. The petitioner was supposed to work for minimum 160 days in preceding 12 calendar months of her termination but she has worked for 103 days only. For these reasons the violation of Section 25-F of the Act is not attracted in this case at all.

10. The next question to be answered is whether the petitioner has proved the violation of Section 25-G of the Act by the respondent or not. The petitioner in para no.10 of the petition has named as many as ten workmen who have been engaged in between 1994 to 2011. she has alleged that these workmen were engaged after her and being junior to her they should have terminated before her. The petitioner has worked till the year 2003 and the workmen shown in para no.10 of the petition from serial no.1 to 7 are thus junior to her as she was engaged in the year 1992 and there is no dispute regarding the same. It is respondent itself who has filed mandays chart showing that the petitioner has worked for 29 days in October 1992. The respondent in reply to this para no. 10 has submitted that these workmen have been re-engaged by the orders of the court. No document has been produced by the respondent to this effect. The petitioner has placed on record one list Ext. PW1/C in which several workmen are shown to have been engaged by the orders of the court but names of Shri Gurdev and Smt. Man Dei are not mentioned in this list. The respondent was bound to produce copies of the award vide which these two workmen were re-engaged. It is not even clear as to when their services were terminated and when they were re-engaged. Thus the respondent, who is custodian of the record has not discharged the onus that was placed upon it by the statute. It is well settled that the Industrial Disputes Act is a beneficial piece of legislation and the court is supposed to watch the interest of the workman and draw the presumptions in favour of the workman. The employer is supposed to lead specific evidence on the plea taken to divest the workman of the valuable rights that had accrued in his favour by virtue of law. The respondent has examined Shri Vishal Chopra, Executive Engineer as RW1 and he has not stated anything about the persons mentioned in para no.10 of the petition. He has in para no.5 his affidavit Ext.RW1/A averred that no new workman was engaged after the petitioner and no junior was retained except those who were re-engaged by the orders of the court. Such statement should have been supported by the documentary material. Since the entire record rests with the respondent therefore, the respondent should have filed on record the seniority lists of daily wagers prepared year to year so that this court could find as to whether any addition has taken place in the list of workers after the year 2003. In other words, had the seniority list been filed and proved on the record, the court would have found that after the year 2003 no fresh hands was engaged. Since no such document has been placed on the record, therefore, an adverse inference is liable to be drawn against the respondent to the effect that the documentary record was against the contents of the affidavit and therefore, those documents were intentionally withheld by the department so that court could not grant any relief to the petitioner. Since it is beneficial piece of legislation therefore, the petitioner at most should have averred in his affidavit that juniors have been retained and fresh hands were re-engaged after his termination. At the most, the workmen could have mention names of few persons as his juniors or fresh hands and nothing more could have been proved by her. The petitioner is not the custodian of the record, and therefore, she had no document in her power and possession which could have been placed by her on the record. It was for the respondent to produce all the documents to prove the case as set up by the respondent. As aforesaid, the respondent has not tendered on the record any such document except for the mandays chart of the petitioner and therefore, an adverse inference is drawn against the respondent for withholding material documents. It is easy to depose that no fresh hands was engaged after the year 2003 but such plea can not be accepted until seniority list of 2003 and of the later years has been brought to the notice of the court so that court could examined the same and infer that there was no addition in the same after year 2003. The petitioner in her sworn affidavit Ext.PW1/A has specifically stated that fresh hands were engaged after her termination and the juniors were retained. She has even named some of the workmen in para no.10 of her affidavit and there is no specific cross-examination on this aspect.

11. The respondent has although taken up the plea that the petitioner herself has abandoned the work but no evidence has been lead to establish the plea of abandonment. No notice was issued to the petitioner while she was absenting herself from the work. No explanation was called for. There is no material on the record that to prove that the matter of the absence of the

petitioner was taken up by the Executive Engineer on administration side and after giving her an opportunity, he recorded a satisfaction to the effect that the petitioner was not willing to the work despite of being called time and again. Had any such exercise been made by him and such document prepared by him would have become material to prove the plea of abandonment as raised by the respondent. Since no such document has been placed on the record, therefore, the plea of abandonment is not established. It is also settled that once the plea of respondent regarding abandonment fails, the ultimate presumption goes that the services of the petitioner were terminated. In this case, the petitioner has not only pleaded but has also spoken on oath that her services were terminated without following the process of law. Thus the violation of Sections 25-G and 25-H of the Act is established in this case.

12. Although the petitioner has been able to establish that there were violation of Sections 25-G and 25-H of the Act yet she has raised demand after a long period of 11 years and there is no explanation on her part for not raising demand at earliest. The law is well settled that the workman can not be permitted to sleep over his rights for years together and then approached the authorities/courts for his reinstatement and such reinstatement discourages all those workmen who are working for years together. It is settled law that a workman who sleeps over his right for years together can not claim reinstatement but the relief can be molded by the court and compensation instead of reinstatement can be granted by taking into account all the relevant facts and circumstances.

13. In the case in hand since the petitioner has raised the demand after more than 11 years therefore, she is not entitled for the relief of reinstatement. Taking into account the number of years passed in between, it will be appropriate and just that the petitioner is held entitled to receive compensation to the tune of ₹75,000/- in lieu of her reinstatement and other consequential benefits. Issue no.1 is decided accordingly.

#### ISSUE No. 2

14. In view of the above discussion the petitioner is held entitled for compensation to the tune of ₹75,000/- (Rupees seventy five thousand only), hence this issue is decided accordingly.

#### ISSUE No. 3

15. In view of the above discussion the claim petition is held to maintainable as it has been filed in support of the reference received from the appropriate Government.

#### RELIEF

16. In view of my discussion on the above issues, it is held that though there had been violation of Sections 25-G and 25-H of the Act in this case but the petitioner had raised demand after a gap of more than 11 years and her claim for reinstatement has therefore, been vitiated by delay and laches, hence, the reinstatement and other consequential benefits can not be granted in her favour but she is held entitled for compensation to the tune of ₹75,000/- (Rupees seventy five thousand only), which would be paid within four months by the respondent from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

17. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 29th day of November, 2022.

Sd/-  
(HANS RAJ),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala (H.P.)*  
*(Camp at Chamba).*

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 84/2017  
Date of Institution : 28-03-2017  
Date of Decision : 09-11-2022

Shri Rakesh Kumar s/o Bal Mukand, r/o VPO Rakh, Tehsil & District Chamba, H.P.  
. . *Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D. Division, Bharmour Chamba, H.P. . . *Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Shri Akshay Jaryal, Ld. Adv.

For the Respondent : Shri Anil Sharma, Ld. Dy. D.A.

**AWARD**

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) :—

**“Whether termination of the services of Shri Rakesh s/o Shri Bal Mukand, r/o V.P.O. Rakh, Tehsil & District Chamba, H.P. during April, 2001 (as alleged by the workman) by the Executive Engineer, H.P.P.W.D., (B&R) Division, Bharmour, Chamba, District Chamba, H.P., without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified ? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”**

2. The case of the petitioner, in brief, is to the effect that he was engaged as daily paid beldar in the respondent Division in 1997 and worked in continuity till April, 2001 when his services were disengaged without giving him an opportunity of being heard and without following of procedure as contained in Section 25-F of the Act. The grievance of the petitioner is to the effect that the respondent further did not disengage the services of those workmen who were junior to the petitioner and thus flouted the principle of 'last come first go'. Apart from it, fresh hands like Shri

Dharmu, Yugal Kishore and Raj Kumar were also engaged and the petitioner was not given an opportunity to work, hence violation of Sections 25-G and 25-H of the Act was also committed. On these grounds, the petitioner raised the demand and when the matter was not amicably settled during the conciliation proceedings, present reference was made by the appropriate Government to this court. It is submitted that the claim be allowed and the services of the petitioner be re-engaged with all the consequential benefits including full back wages etc.

3. The respondent has resisted and contested the claim and taken the preliminary objection of delay and laches in approaching the appropriate Government by way of demand notice. On merits, it is admitted that the services of the petitioner were engaged in the year 1997. It is explained that the petitioner left the work at his own sweet will in April, 2001. Prior to the leaving of the work, the petitioner was very casual and had worked intermittently during period pleaded by him and his services were never terminated. Shri Raj Kumar is said to have never worked with the respondent, whereas, two more workmen S/Sh. Yugal Kishore and Dharmu had worked continuously and their services were regularized as per the Government policy. It is submitted that the respondent has neither violated the provisions contained in Section 25-F nor that of Sections 25-G and 25-H of the Act as petitioner has himself left the work.

4. No rejoinder was filed and from the pleadings of the material on the record and the language of the reference, following issues have been framed for determination on 07.04.2021:-

1. Whether termination of the services of petitioner by the respondent during April, 2001 is/was illegal and unjustified, as alleged? If so, its effect? . . .*OPP*.
2. Whether the claim petition is not maintainable, as alleged? . . .*OPR*.
3. Whether the claim petition is bad on account of delay and laches, as alleged? . . .*OPR*.

Relief.

5. I have heard learned counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

6. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	: Yes
Issue No.2	: No
Issue No.3	: No
Relief.	: Petition is <b>partly allowed</b> per operative portion of the Award.

#### REASONS FOR FINDINGS

##### ISSUES No.1 and 3

7. All these issues taken up together for the sake of convenience and to avoid the repetition of evidence.

8. The mandays chart of the petitioner has been placed on the record as Ext.PW1/B. A careful perusal of the same shows that the petitioner was engaged in June 1997 and he worked till

April 2001. In the year 2001 he worked for 42 days and in the year 2000 he worked for 179 days only. Even if the working of these two years is calculated together the number of working days comes to 221 which is less than 240. If the number of days required are considered as 180 by taking into account that the petitioner was working in hard area of Bharmour of District Chamba, even then 180 days are not complete when the number of days for 12 calendar months preceding his termination are calculated in the reverse order. Thus the petitioner has failed to prove that there was violation of Section 25-F of the Act in this case.

9. The next factual dispute that requires adjudication is whether the services of the petitioner were terminated or he has abandoned the work at his own. The petitioner has alleges termination of his services whereas, the respondent alleges that petitioner has abandoned the work at his own. It may be stated at the very beginning that plea of abandonment is a plea of facts and the entire onus is upon the employer. The Act is a beneficial piece of legislation, and therefore, it leans in favour of the workmen. The court has to presume the facts in favour of the workmen and the onus is always upon the employer to rebut the aforesaid presumption. The workman has to discharge the onus only to the prima-facie level. Once he succeeds in doing so, the onus is immediately shifted upon the employer to lead the evidence to the contrary. Since, the employer is the custodian of the records, it is for him to place material documents maintained during the period claimed by the workman. The petitioner in the present case has specifically alleged that his services were terminated orally in April, 2001 by the respondent. He has sworn his affidavit to this effect and has succeeded in discharging the initial onus placed upon him. The onus has thus shifted upon the respondent to prove that the petitioner has abandoned the work and his services were never terminated. The respondent has not placed on record any document to support the plea of abandonment. Abandonment is not automatic but the employer has to derive such a satisfaction after making efforts to call back the workman to work, when the work and funds are still available. In this case, the respondent has not pleaded that the work and funds had exhausted with the department. The only case of the respondent is to the effect that the petitioner had left the work at his sweet will. In case, the petitioner had absented himself from the work, it was the duty of the employer to have written a letter to the petitioner asking him to join the work as funds and work was still available. It was the duty of the employer to have called for the explanation of the petitioner for his absence, and in case, the petitioner did not report to the work despite of such demand then the respondent could have presumed that petitioner was not willing to work. Such presumption was supposed to be recorded in writing by the respondent so that the document containing such satisfaction could be brought before the court, in case, any dispute was raised at later any point of time. In this case, the respondent has neither written a letter to the petitioner nor called for any explanation and nor has taken any steps to call back the petitioner to report for the work. The respondent has also not placed on record any documentation prepared at the time when the presumption of abandonment was drawn by the respondent. In other words, the respondent has not taken any steps to call back the petitioner. Once the respondent has not taken any steps to call back the petitioner, therefore, the plea of abandonment of the work by the petitioner is not established and the only conclusion that can be legitimately drawn is that the services of the petitioner were orally terminated in April, 2001.

10. The petitioner has alleged that there has been violation of Sections 25-G and 25-H of the Act by the respondent. The petitioner has specifically named one Shri Yugal Kishore and another Shri Dharmu as his juniors and has placed their Mandays charts on the record for the perusal of the court. The mandays chart of Shri Yugal Kishore shows that he was engaged for the first time in January 1998. Thus this Yugal Kishore was junior to the petitioner. The services of the petitioner were terminated in the year 2001, whereas, Shri Yugal Kishore worked till the year 2013 and now his services have been regularized. Thus in the year 2001 a junior namely Shri Yugal Kishore was already working when the services of the petitioner were terminated. Even if it is presumed for a while that the petitioner had absented himself and did not report to the work, the



respondent was not relieved of its duties of calling back the petitioner back as the respondent was very well knowing the fact that this Yugal Kishore was junior to the petitioner and therefore, the petitioner had to be called back so that he could not take the plea at later point of time that the workman junior to him was made to work and his services were discontinued. It is settled law that the present Act is a beneficial piece of legislation and it is meant to protect illiterate and any underprivileged working class, who are not well-conversant with the legal complication. The rights of such persons can not be curtailed mechanically without making them aware of their rights and the manner in which the same are to be safeguarded. Once the petitioner has started absenting himself and workmen junior to him were still working, the respondent was duty bound to call the petitioner back and apprise him of his valuable rights. Since the petitioner has been able to establish that the workmen junior to him were retained at the time of his termination, therefore, there is violation of section 25 G of the Act in this case.

11. There is again violation of Section 25-H of the Act as Shri Dharmu was engaged in January 2003 and the petitioner who was already out of work on account his termination was not given an opportunity to work before giving work to new workman namely Sh. Dharmu. The mandays chart of Shri Dharmu has been tendered on record As Ext.PW1/E and it shows that he was engaged in January 2003 and he worked till 2013 as a daily wager and thereafter his services were regularized. Once the respondent intended to engage fresh hands in the year 2003, it was duty bound to give the first priority to the petitioner. The respondent is proved to have neither called nor offered the work to the petitioner, and has rather preferred a fresh hand namely Shri Dharmu, hence the respondent is proved to have violated Section 25-H of the Act.

12. The learned Deputy District Attorney for the respondent has heavily relied upon the issue of delay and laches in this case and has submitted that since reference has been received after a considerable period, therefore, the petitioner is proved to have slept over his rights and therefore, he is not entitled for reinstatement. On the other hand, the learned counsel for the petitioner has argued that the petitioner has raised the demand at earliest and it were the Authorities, who did not pursue the matter with promptness, therefore, the petitioner can not be blamed for the same. It may be stated at the very beginning that the reference received from the appropriate Government does not find that the plea of delay and laches was agitated during the conciliation proceedings by the respondent. Had the plea of delay and laches been agitated during the conciliation proceedings, a specific reference to this effect would have also been received by this court. When there is no reference regarding impact of delay and laches upon the case of the petitioner, this court can not examine the matter regarding delay and laches and give findings upon the same. It is well settled law by now that unless the reference on the question of delay and laches is received by the court, the court can not pass an adverse order against the petitioner on the ground that plea of delay and laches was raised in the reply. In case titled **State of H.P & Anr. Vs. Mahinder Singh reported in 2017 LLR 1256**, the State Government of H.P had assailed the Award of the Labour court by way of writ petition on the plea that the Labour Court should have dismissed the claim petition on the ground of delay and laches as the workman had raised the dispute after a considerable time. Relying upon **Mukand Ltd. v. Mukand Staff & Officers association reported in 2004(101) FLR 219 (SC) and other rulings**, it was held that the Tribunal being the creature of the Reference, can not adjudicate the matters not within the purview of the dispute actually referred to it by the order of Reference. It was further held that since the question of delay and laches was not referred to the Tribunal, therefore, the Tribunal could not have answered the Reference against the workman on the ground of delay and laches, and has thus rightly granted the relief.

13. Otherwise also the plea of delay and laches is not made out in the instant case. The petitioner has issued the demand notice on 8.11.2007 as is clear from the copy of demand notice Ext.PW1/C. The matter remained pending with the appropriate Government and reference was made in the year March 2017 to this court. Thus the petitioner was not responsible for the delay of

ten years as the same as occasioned on account of the fact that the matter remained pending with the Conciliation Officer as well as appropriate Government for as long as ten years. The petitioner has approached the Conciliation Officer by way of demand within four years of engagement of fresh hand Shri Dharmu without giving the petitioner an opportunity to work and this delay of four years is not very serious as the labour class, as aforesaid, is not aware of the legal complication and their rights on account of illiteracy and being under privileged. A reasonable delay occasioned in raising the voice against the injustice can not be taken to curtail the valuable rights created in favour of the workmen. Otherwise also, as aforesaid, the plea of delay and laches can not be examined in this case as such plea was not raised during conciliation proceedings and no reference has been received by this court on this aspect. Thus the plea of delay and laches fails and petition is maintainable.

14. Statement of Shri Jai Chand, Executive Engineer as RW1 is not very helpful to the respondent. Shri Jai Chand tendered is affidavit Ext.RW1/A and mandays chart of the petitioner Ext.RW1/B and that of Shri Dharmu and Shri Yugal Kishore Ext.RW1/C and Ext.RW1/D. He has nowhere said about the fact that the petitioner was called back by the department at any point of time.

15. It is although made out from the aforesaid discussion that compliance of Section 25-F of the Act was not required for the reason that the petitioner has not completed minimum 240 days before his termination, yet it is proved that there has been violation of Sections 25-G and 25-H of the Act for the reasons already recorded hereinabove and number of days for which the petitioner has worked are not material to prove the violation of Sections 25-G and 25-H of the Act.

16. Thus for the aforesaid reasons and findings it is held that the petitioner has been able to prove that his services were terminated without following the process of law in April 2001. The petitioner is therefore, held entitled for reinstatement with continuity in service and seniority except back wages as petitioner has not raised the issue within a year or two. The petitioner has also not proved by leading cogent and convincing evidence that he had remained unemployed during the period and was not gainfully employed anywhere. Issue no.1 is held in affirmative, issues no.2 and 3 are held in negative.

#### RELIEF

17. In view of my discussion, it is held that the petitioner has proved that his services were terminated illegally and in violation to the provisions contained in Sections 25-G and 25-H of the Act by the respondent. The claim petition is, therefore, partly allowed. The respondent is directed to reinstate the petitioner in service forthwith. He shall be entitled to continuity in service and seniority from the date of his illegal termination except the back wages. Parties are left to bear their costs.

18. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 9th day of November, 2022.

Sd/-  
(HANS RAJ),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala (H.P.)

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)  
(CAMP AT CHAMBA)**

Ref. No. : 533/2015  
Date of Institution : 21-11-2015  
Date of Decision : 30-11-2022

Ms. Man Dei d/o Shri Chuni Lal, r/o Village Gosti, P.O. Karyas, Tehsil Pangti, District Chamba, H.P. . .Petitioner.

*Versus*

The Executive Engineer, Killar Division H.P.P.W.D/I & PH, Killar (Pangti) District Chamba, H.P. . .Respondent.

**Reference under section 10 (1) of the Industrial Disputes Act, 1947**

For the petitioner : Sh. O.P. Bhardwaj, Ld. Adv.  
For the respondent : Sh. Anil Sharma, Ld. Dy. D.A.

**AWARD**

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) :—

**“Whether the industrial dispute raised by the worker Ms. Man Dei d/o Shri Chuni Lal, r/o Village Gosti, P.O. Karyas, Tehsil Pangti, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D./I.&P.H., Killar (Pangti), District Chamba, H.P. vide demand notice dated 28-06-2012 regarding her alleged illegal termination of services during October, 1992 suffers from delay and laches? If not, Whether termination of services of Ms. Man Dei D/O Shri Chuni Lal, r/o Village Gosti, P.O. Karyas, Tehsil Pangti, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D./I.&P.H. Killar (Pangti), District Chamba, H.P. during October, 1992, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”**

2. The petitioner has pleaded in her claim that she belongs to Tehsil Pangti, District Chamba, a remote area declared as schedule tribe and it remains cut off for almost for six months from the rest of Country. Single line administration system runs in this area and a daily wager has to work for 160 days in a calendar year to avail the benefit of Section 25-B of the Act. The services of the petitioner were engaged in year 1988 without any appointment letter and she worked with intermittent breaks till October 1992 and her services were orally terminated by the respondent without following the process of law despite of the fact that the work and funds were very much available. The petitioner contends that she has no source of income and is not gainfully employed anywhere. The respondent had retained the juniors named in para no.10 of the petition while disengaging the services of the petitioner and fresh workmen were also engaged without giving an

opportunity to the petitioner to return and join the work. The petitioner initially made oral requests to the respondent department but nothing favourable took place. She raised her demand by way of demand notice dated 28.6.2012 in which conciliation could not succeed and present reference was made by the appropriate government for adjudication. On the aforesaid averments, the petitioner has prayed for her reinstatement with all the consequential benefits.

3. The respondent has resisted and contested the petition and explained that the petitioner was engaged as daily wage beldar in the year 1994 and she worked intermittently till the year 1996 and thereafter left the job at her own. No fictional breaks were given to her and she was rather herself casual in attending the work and for this reason she never completed the work of 160 days in any of the calendar year. The petitioner is said to have raised the dispute after almost fourteen years and she was not entitled for any relief. It is denied that any junior was retained or a fresh hand was engaged by the department as alleged by her, hence, the petitioner was not entitled for any relief as her claim was frustrated by the long delay in raising the demand.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply. She has specifically named few workmen who were engaged after her termination.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 18.5.2016:—

1. Whether the industrial dispute raised by the petitioner vide demand notice dated 28.6.2012 qua her termination of service during October, 1992 by respondent suffers from the vice of delay and laches as alleged? . . .*OPP*.
2. Whether termination of the services of petitioner by the respondent during October, 1992 is/was illegal and unjustified as alleged? . . .*OPP*.
3. If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.

Relief.

6. I have heard learned Counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

7. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	: decided accordingly
Issue No.2	: decided accordingly
Issue No.3	: decided accordingly
Issue No. 4	: No
Relief.	: Petition is <b>partly allowed</b> awarding lump sum compensation of ₹50,000/- per operative portion of the Award.

## REASONS FOR FINDINGS

## ISSUES No.1 to 3

8. All these issues are taken up together for sake of convenience and to avoid repetition of facts and evidence.

9. It may be stated at the very beginning that there is variation regarding the date of retrenchment in the reference and the mandays chart. In the reference her services are said to have been terminated in October 1992, whereas, the mandays chart of the petitioner tendered by the respondent as RW1/B on the record shows that she has worked in between 1994 to 1996. In the year 1996, she has been shown to have worked for 127.5 days. Thus, her termination has taken place in the month of November 1996 and not in October 1992. Find that there was a gap of four years regarding the time of termination in the reference and the mandays chart produced for the inspection of the court, the petitioner prayed time for seeking a corrigendum from the appropriate Government. At that stage the file was ready for orders in the year 2017. Since the year 2017, the corrigendum has not been received and the file has been adjourned from time to time with no progress.

10. In **Sansar Chand vs. State of Himachal Pradesh** reported in **2018 LAB. I.C. (NOC) 145 (H.P.)**. It was held that once the Labour Court/Industrial Tribunal receives a Reference from the Appropriate Government under Industrial Disputes Act, the court is bound to adjudicate the same and can not hold the same as not maintainable. It has been held by the Hon'ble High Court of Himachal Pradesh that it is not very material as to when the services of the workman were terminated. In case there is difference regarding the date of termination in the reference and the mandays chart, the court can ignore the same as the only fact relevant is that the services of the petitioner have been terminated. In the aforesaid case, a claim based on a reference was dismissed on the ground that there was a variation with respect to the date of termination in the reference and the mandays chart. In writ petition the Hon'ble Court was pleased to set aside the order of the dismissal and matter was remanded to the court with the directions that the court should not enter in undue technicalities as the fact remain that the petitioner was out of service on the date when he raised the demand. It was directed that the variation in the date of the termination in the reference and the mandays chart was thus immaterial. Applying the aforesaid case law to the facts and circumstances of this case, it may be submitted here that the reference can be decided on merits without waiting for a corrigendum as, as many as five precious years have been lost in applying and waiting for the corrigendum from the appropriate Government and nothing has been received till date. Therefore, the date of termination of the services of the petitioner shall be treated as November 1996 in place of October 1992 as mentioned in the reference and the date shall be read as 1996 in the issues framed instead of 1992.

11. The mandays chart of the petitioner Ext.RW1/B shows that she has worked for 127.5 days in the year 1996 and in the year 1995 she has worked for 4 days only. No doubt, the petitioner has worked in the tribal area even then she was supposed to work for minimum 160 days in order to claim the benefit of Section 25-F of the Act. Since her working days comes to  $127.5 + 4 = 131.5$  days therefore, she has not worked for minimum 160 days and the provisions of Section 25-F of the Act is not attracted at all. It may be stated here that the present reference is not with respect to time to time termination but it is relating to the final termination hence, the petitioner has failed to meet the requirement in order to invoke the provision of Section 25-F of the Act. It is, therefore, held without further discussion on the point that the petitioner has failed to prove that there has been violation of Section 25-F of the Act.

12. The petitioner has come up with the case that junior workmen to her were retained and fresh hands were also engaged after her termination. The respondent, on the other hand, has come

up with the case that no workman junior to her was retained and no fresh hands were engaged. As per the respondent, only those workmen have been re-engaged in whose favour orders were passed by the Labour Court/Tribunal. The respondent has placed on record such list Ext.RW1/C in which one Raj Kumar is shown to have been engaged in the year 1996 and Shri Dev Raj has also been shown and having been engaged in the year 1989 and Shri Tek Chand is said to have been engaged in the year 1999. The petitioner has stated in the cross-examination while she appeared as PW1 about the facts pleaded in the claim petition and her affidavit is Ext. PW/1A. During cross-examination she has denied that no workman junior to her was retained. On the other hand Shri D.R. Chauhan, Executive Engineer has appeared as RW1 in the witness box and his affidavit Ext.RW1/A. He has stated in his affidavit that the workman who have been engaged after the petitioner were engaged as per the orders of the Tribunal. It may be stated here that since the Industrial Disputes Act is a piece of beneficial legislation meant to protect and watch the interest of the workmen who are either illiterate or semi literate and are also represented by authorized representative, who are not well-versed with the legal complications and procedure, the court has to act in a liberal manner while examining the pleadings and evidence by the worker class. Since the employer is custodian of the records and upto date record has to be maintained in the government department, it is for the respondent to place on record the document prepared at the relevant time so that court could examine the same. The respondent has not filed on the record any affidavit of the officer of the department to show that no fresh hand was engaged as daily wage labourer in the department after the year 1996. When this is so, it can not be said that no fresh hand was engaged by the respondent after 1996. In this case, no document except the mandays chart of the petitioner has been placed on record, and therefore, the presumptions are liable to be drawn in favour of the petitioner. It is, therefore, held that the respondent has failed to establish that no fresh hand was engaged after the termination of the services of the petitioner in the year 1996. In this case neither the case number in which such person was a party has been pleaded nor copy of Award has been placed on the record to show that the services of any such persons have been re-engaged by the orders of the court. This list Ext.RW1/C is not sufficient to prove this fact as the court can not believe this document lightly. It is clear from this document and one Shri Tek Chand has been engaged for the first time in the year 1999. Had his services been terminated at earlier point of time, then this list would have shown his working days right from his initial engagement and the break in between which was condoned by way of the award of the court. Since his working days have been shown from 1999 onward therefore, the presumption goes that he was engaged for the first time in 1999 and his services were never re-engaged by the order of the court. Had his complete mandays chart been filed on record to apprise this court about the fact that his services were terminated prior to the petitioner, and therefore, he was re-engaged after the orders of the court, the position would have been different. Similarly in RW1/C Shri Suraj Ram beldar has been shown to have been engaged in the year 1997 and there is no mention on earlier working days in this list. It is even not clear as to when his services were terminated earlier and for how many days he had worked before the year 1997. The list though runs from the year 1997 onward and it shows that he was engaged for the first time in the year 1997. It is, therefore, clear that his services were engaged after the services of the petitioner. There is one Shri Dev Raj shown at serial no.7. he has been shown working since the year 1989 onward and there is a break of two years 2005 and 2006 in between where after he has been re-engaged in the year 2007. This case can be treated as the case based upon the orders of the court as this person is shown to have been engaged in the year 1989 and there is a break in between for the year 2005 and 2006. This break shows that he had approached the court after he was terminated in the year 2005 and thus he remained out of work upto the year 2007 and for this reason his working days have been shown in continuity after the year 2007 upto 2014. Rest of cases shown in this list Ext.RW1/C shows that the initial working days of these workmen have not been shown and it is also not clear as to when the breaks were given them and when they approached the courts. There is one Smt. Sarita who was engaged for the first time in the year 1998 and thereafter there is a break of many years and she was re-engaged in the year 2012. This can also be case of re-engagement by the orders of the court but in the rest of

the cases of alleged re-engagement their initial engagement has not been shown anywhere. Their days have been shown in continuity which proves that they were engaged for the first time. All these workmen have been engaged after the year 1996 and therefore, it is proved that fresh hands have also been engaged without giving priority to the petitioner, and such a conduct is clear cut violation of Section 25-H of the Act. The respondent has thus failed to discharge onus that was placed on it and the document Ext. RW1/C is relied against the respondent itself for the aforesaid reasons.

13. In the case in hand, since the respondent has taken the plea that the petitioner has left the work at her sweet will and her services were never terminated, therefore, the onus is upon the respondent to establish this plea. The respondent has not led any cogent and convincing evidence to establish the plea of abandonment. No notice was issued to the petitioner in case she was absenting herself from the work. No explanation was called for. There is no material on the record that to prove that the matter of the absence of the petitioner was taken up by the Executive Engineer on administration side and giving an opportunity to the petitioner he recorded a satisfaction to the effect that the petitioner was not willing to the work despite of being called time and again. Had any such exercise been made by him and such document prepared by him would have become material to prove the plea of abandonment as raised by the respondent. Since no such document has been placed on the record, therefore, the plea of abandonment is not established. It is also settled that once the plea of respondent regarding abandonment fails, the ultimate presumption goes that the services of the petitioner were terminated. In this case, the petitioner has not only pleaded but has also spoken on oath that her services were terminated without following the process of law. Though there is no violation of section 25 F of the Act, yet it was the duty of the respondent to have called the petitioner before engaging few workmen shown in the list Ext. RW1/C names whereof have been mention in the earlier part of this award as, they are proved to have been engaged as fresh hands and not in compliance to the awards passed by the court.

14. Although the petitioner has been able to establish that there were violation of Section 25-H of the Act yet she has raised demand after a long period of 16 years and there is no explanation on her part for not raising the demand at earliest. The law is well settled that the workman can not be permitted to sleep over his rights for years together and then approached the authorities/courts for his reinstatement and such reinstatement discourages all those workmen who are working for years together. It is settled law that a workman who sleeps over his right for years together can not claim reinstatement but the relief can be molded by the court and compensation instead of reinstatement can be granted by taking into account all the relevant facts and circumstances.

15. In the case in hand since the petitioner has raised the demand after more than 16 years therefore, she is not entitled for the relief of reinstatement. Taking into account the number of years passed in between, it will be appropriate and just that the petitioner is held entitled to receive compensation to the tune of ₹50,000/- in lieu of her reinstatement and other consequential benefits. All the issues are decided accordingly.

#### ISSUE No. 4

16. In view of the above discussion the claim petition is held to maintainable as it has been filed in support of the reference received from the appropriate Government.

#### RELIEF

17. In view of my discussion on the above issues, it is held that though there had been violation of Section 25-H of the Act in this case but the petitioner had raised demand after a gap of

more than 16 years and her claim for reinstatement has therefore, been vitiated by delay and latches, hence, the reinstatement and other consequential benefits can not be granted in her favour but she is held entitled for compensation to the tune of ₹50,000/- (Rupees Fifty thousand only), which would be paid within four months by the respondent from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

18. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 30th day of November, 2022.

Sd/-  
(HANS RAJ)  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.  
(Camp at Chamba)

## JAL SHAKTI VIBHAG

### NOTIFICATION

*Shimla-171 002, the 17th February, 2023*

**No. JSV-B(C)17-3/2023.**—In partial modification of Finance Department's notification No. Fin(C)A(2)-4/96, dated 04-03-2014, the Governor, Himachal Pradesh is pleased to order to enhance/revise the delegation of power in respect of the officers of the Jal Shakti Vibhag of Himachal Pradesh in following manner:-

Sl. No.	Name of Powers	Authority to whom the Powers delegated	Revised/enhanced powers
1.	<b>ESTIMATE POWERS</b>		
1.	Administrative Approval and Expenditure sanction		
(iii)	Accord of Technical Sanction to estimates of civil works.	Engineer-in-Chief Chief Engineer Superintending Engineer  * The estimates having pumping machinery component above 10 HP shall be processed only at SE Level and above.  XEN (Selected)	Full powers Full powers 600. 00 Lakh      125.00 lakh



			XEN (Non-selected) AE	75.00 lakh 10.00 lakh
	2.	<b>Agreement</b> (i) Acceptance of lowest tender.	Engineer-in-Chief Chief Engineer Superintending Engineer  * The tender having pumping machinery component above 10 HP shall be processed only at SE Level and above.  XEN (Selected) XEN (Non-Selected) AE	Full powers 50.00 Crore 600.00 lakh   125.00 lakh 75.00 lakh 2.00 lakh

Other delegations and terms and conditions will remain the same and these delegations are subject to budget availability at the respective level and are also in modification of F.D's notification bearing No. Fin-F-(A)-(11)-11/2004, dated 03-06-2014.

These powers shall come into force from the issuance of this notification.

This issues with the prior approval of Finance Department obtained *vide* U.O. No. FIN(C)-B(15)-11/2021 dated 08-02-2023.cccc

By order

Sd/-  
(AMITABH AVASTHI)  
*Secretary (JSV).*

## TRANSPORT DEPARTMENT

### NOTIFICATION

*Shimla-2, the 20th February, 2023*

**No. TPT-C (9)-8/2002.**—The Governor, Himachal Pradesh in exercise of the powers conferred by sub section (6) of Section-41 of the Motor Vehicles Act, 1988 (No.59 of 1988) and all other powers enabling him in this behalf is pleased to allot /release registration marks/number from Serial No.0001 to 9999 under the Registration mark **HP-12Q** to Registering and Licensing Authority, Nalagarh, District Solan, Himachal Pradesh for registration of motor vehicles with effect from the publication of this notification in the H.P. Rajpatra (Extra Ordinary) in the public interest.

By order,

Sd/-  
R. D. NAZEEM, I.A.S.,  
*Principal Secretary (Transport).*

## पर्यटन एवं नागरिक उड्डयन विभाग

अधिसूचना

शिमला-2, 21 फरवरी, 2023

संख्या : टी0एस0एम0-एफ 6-1/2001-V.—इस विभाग की समसंख्या अधिसूचना दिनांक 12-12-2022 की निरंतरता में तथा हिमाचल प्रदेश वायु क्रीड़ा (एँअरो स्पोर्ट्स) नियम, 2021 के नियम, 2021 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, हिमाचल प्रदेश के राज्यपाल सहर्ष निम्नलिखित पायलटों को गठित तकनीकी समिति का सदस्य (वर्णित अधिसूचना के क्रम संख्या-8 में निहित प्रावधान अनुसार) नामित करते हैं:—

1. श्री वेद राम पुत्र श्री भगत राम, गांव एवं डाकखाना बुरुआ, तहसील मनाली, जिला कुल्लू, हि0 प्र0।
2. श्री पवन शर्मा पुत्र श्री चन्द्रकांत, गांव त्राम्बली, डाकखाना बारी, तहसील एवं जिला कुल्लू, हि0 प्र0।
3. श्री प्रदीप कुमार पुत्र श्री ईश्वर चन्द, गांव भथली, डाकखाना खजियार, तहसील एवं जिला चम्बा, हि0 प्र0।
4. श्री अरविन्द पॉल पुत्र श्री यश पॉल, गांव किओरी, डाकखाना बीड़, तहसील बैजनाथ, जिला कांगड़ा, हि0 प्र0।
5. श्री अनिल कुमार पुत्र श्री लच्छमन चन्द, गांव ताहू, डाकखाना एवं तहसील धर्मशाला, जिला कांगड़ा, हि0 प्र0।

आदेश द्वारा,

हस्ताक्षरित/—

(देवेश कुमार),

सचिव (पर्यटन एवं नागरिक उड्डयन)।

*[Authoritative English text of this department Notification No. TSM-F(6)-1/2001-V, dated 21-02-2023 as required under clause (3) of Article 348 of the Constitution of India].*

## TOURISM &amp; CIVIL AVIATION DEPARTMENT

## NOTIFICATION

Shimla-2, the 21st February, 2023

**No. TSM-F(6)-1/2001-V.**—In continuation of this department's notification of even number dated 12-12-2022 and in exercise of the powers conferred by the rule 6 of the Himachal Pradesh Aero Sports Rules, 2021, the Governor of Himachal Pradesh is pleased to nominate the following Pilots as members (as provided *vide* Serial No. 8 of said notification) of Technical Committee:—

1. Sh. Ved Ram s/o Sh. Bhagat Ram, V.P.O. Burua, Tehsil Manali, District Kullu, H.P.
2. Sh. Pawan Sharma s/o Sh. Chanderkant, Vill. Trambli, P.O. Bari, Tehsil & Distt. Kullu, H.P.
3. Sh. Pradeep Kumar s/o Sh. Ishwar Chand, Village Bhatvli, P.O. Khajjiar, Tehsil & Distt. Chamba, H.P.
4. Sh. Anil Kumar s/o Sh. Lachman Chand, Village Tahu, P.O. & Tehsil Dharmashala, Distt. Kangra, H.P.
5. Sh. Arvind Paul s/o Sh. Yash Paul, Village Keori, P.O. Bir, Tehsil Baijnath, Distt. Kangra, H.P.

By order,

Sd/-  
(DEVESH KUMAR),  
Pr. Secretary (Tourism & CA).

**In the Court of Shri Nishant Kumar, Sub-Divisional Magistrate, Shimla (R),  
District Shimla (H. P.)**

Sh. Prem Prakash s/o Ghanglu Ram, r/o Village Shakrori, P.O. Chaba, Tehsil Sunni, District Shimla (H.P.).

*Versus*

General Public

. . Respondent.

Sh. Prem Prakash s/o Ghanglu Ram, r/o Village Shakrori, P.O. Chaba, Tehsil Sunni, District Shimla (H.P.) has filed an application in the court of undersigned under section 13(3) of the Birth & Death Registration Act, 1969 to enter date of death of his Aunt named—Late Smt. Bhupi Devi w/o Late Sh. Pretam in the record of Secy., Birth and Death, in Gram Panchayat Shakrori Shimla.

Sl. No.	Name of the family member	Relation	Date of Death
1.	Late Smt. Bhupi Devi	Aunt	07-09-1997

Hence, this proclamation is issued to the general public if they have any objection/claim regarding entry of the name & date of death of above named in the record of Gram Panchayat Shakrori Shimla may file their claims/objections on or before one month of publication of this notice in Govt. Gazette in this court, failing which necessary orders will be passed.

Issued today on 02-02-2023 under my signature and seal of the court.

Seal.

Sd/-  
Sub-Divisional Magistrate,  
Shimla (R), District Shimla (H.P.).

**In the court of Shri Rajender Singh, Assistant Collector-IIInd Grade-cum- Executive  
Magistrate, Darlaghat, District Solan, H.P.**

मिसल नं० : 08/2023

तारीख रजुआ : 18-02-2022

मुकद्दमा बनाम : श्री सुन्दर पुत्र श्री मडू, निवासी गांव कोयल सनोग, उप-तहसील दाड़लाघाट, जिला सोलन,  
हि० प्र०।

बनाम

आम जनता

प्रार्थना-पत्र गुमशुदगी बारे।

प्रार्थी श्री सुन्दर पुत्र श्री मडू, निवासी गांव कोयल सनोग, उप-तहसील दाड़लाघाट का रहने वाला था, जोकि अरसा तकरीबन 40 वर्षों से घर छोड़ कर चला गया था। प्रार्थी सुन्दर घर छोड़ कर गया उस समय अविवाहित था। उसका आस-पास के गांव में कोई पता नहीं है। मिसल के साथ पटवारी मटेरनी व कार्यालय ग्राम पंचायत सारमा की रिपोर्ट साथ संलग्न है। मिसल के साथ वर्ष 2015-2016 की जमाबन्दी साथ संलग्न है। इस गुमशुदगी की दुरुस्ती बारे हर आम व खास को इस इश्तहार द्वारा सूचित किया जाता है कि यदि इस गुमशुदगी की दुरुस्ती में किसी को उजर या एतराज हो तो वे इस न्यायालय में दिनांक 14-03-2023 को प्रातः 10.00 बजे असातन व वकालतन हाजिर या असहमति प्रकट कर सकते हैं। उक्त तिथि के पश्चात् कोई उजर या एतराज काबले समायत नहीं होगा तथा गुमशुदगी के आदेश पारित कर दिये जायेंगे।

आज दिनांक 14-02-2023 को हमारे हस्ताक्षर तथा मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/-  
सहायक समाहर्ता द्वितीय वर्ग,  
उप-तहसील दाड़लाघाट, जिला सोलन (हि० प्र०)।